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A HISTORY OF CALIFORNIA LABOR LEGISLATION

WITH AN INTRODUCTORY SKETCH OF THE SAN FRANCISCO LABOR MOVEMENT

DEDICATED TO

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IN THE UNIVERSITY OF NEBRASKA,

BY HIS PUPIL AND CO-WORKER.

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A HISTORY OF CALIFORNIA LABOR LEGISLATION

WITH AN INTRODUCTORY SKETCH OF THE SAN FRANCISCO LABOR MOVEMENT

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PREFACE.

In this study of the California labor legislation, I have regarded the legal enactments as but the final expression of the demands of the wage-workers of the state at different periods in its economic development. I have tried to trace the circumstances giving rise to these demands, and also the social forces making possible the passage of the proposed measures. As this is a type of legislation which establishes new precedents, its presentation is incomplete without a review of the court decisions by which the labor laws have been interpreted and fitted into the existing legal system.

The author frankly acknowledges a sympathetic interest in the long struggle of the working people of California to obtain legal protection and to win a full share in those economic advantages afforded by the rich natural resources of the state. While it is impossible to escape entirely from such a personal bias, an earnest effort has been made to give an impartial presentation of the facts that are most essential to an understanding of the development of the California labor movement and legislation.

I have hoped that this study might prove a modest contribution towards a better understanding of some of those subtler problems of social and economic development that must occupy the future students of American history. The records of the western states, particularly of California, furnish rich material for this type of history. A favorable environment, a population of great intelligence and power of initiative, and an unusual freedom from the restraints of older communities, have all combined to make possible an untrammelled development of forms of social life which may yet prove to be the sources of what is most original in our civilization.

The introductory sketch of the San Francisco labor movement has been written primarily for the purpose of giving an understanding of the social forces back of the labor legislation. In it I have endeavored to trace the development of the organizations of wage-workers, and to notice the events leading to or indicating important changes of policy. It has been necessary to omit much that may be regarded as important from other points of view. For example the strike of the street-car employees in 1907 involved many people and was interesting as a demonstration of the solidarity of feeling on the part of the wage-workers of San Francisco, but did not influence labor legislation or establish new policies. It has not been considered necessary to enter fully into the history of the Labor Union party for the same reasons.

Running through this record of the organized efforts of the wage-workers to secure legislation protecting their interests, we find two distinct social movements which have great interest for the sociologist. First, an exceptionally good opportunity is given for the study of problems that arise when races incapable of amalgamation meet in economic competition. Second, this history furnishes the social psychologist with material enabling him to trace the process of development of social sanctions whose strength is comparable only to those of great religious movements of the past. Such a study has great practical value for those who are striving to understand the industrial problems of other sections of the country, as we have in San Francisco but the culmination of tendencies present in a less degree in other parts of the United States.

The two periods when the power of concerted action developed in economic contests was diverted to the field of politics are peculiarly suggestive. Only unusual circumstances, tending to arouse a strong class consciousness, have been able to bring about united political activity on the part of the working people of California. In the history of the Workingmen's Party of 1877-1879, and the political activities in San Francisco in 1901-5, we have instructive examples of the political upheavals to which our modern economic struggles may give rise.

This study was undertaken after five years spent in educational work among the wage-earners of San Francisco. I have tried to combine in it the scholarly interests of my University experiences, and the practical aims of a settlement worker. I feel that the California labor movement has attained the degree of development possible by the cruder methods, and that it has now reached a stage where greater knowledge and a more statesmanlike insight into the complex economic life of our age, are necessary for further growth. I hope that this exposition of legal principles determining the validity of past legislation will enable the trade-unionists of California to understand more clearly the legal status of their movement, and will prevent the waste of energy in securing the passage of unconstitutional measures, which has so frequently occurred during the earlier periods of trade-union activity. A knowledge of the long record of successes and failures of the past should help the cultivation of that patience, that willingness to work steadily through many discouragements for the attainment of completer justice for the masses, that have been necessary in all great democratic movements.

I am indebted to Professor A. C. Miller, of the University of California, for suggestions and encouragement at every stage of the work. Professor H. W. Farnam, of Yale University, has also read the book in manuscript. Professor C. C. Plehn, of the University of California, generously permitted me to use a large amount of material collected by his pupils. I am also indebted to Miss Eudora Garoutte, of the California History Department of the California State Library, for many useful references. The officers of the San Francisco labor organizations, particularly of the Labor Council, the Sailors' Union of the Pacific, and the Typographical Union, have been most courteous in allowing me access to records, and in answering questions. Mr. W. J. French, editor of the *Labor Clarion*, has assisted me in clearing up a number of obscure points. I wish to make particular acknowledgment of the valuable assistance I have received from Mr. Walter Macarthur, editor of the *Coast Seamen's Journal*. He has not only allowed me to make use of the many important records of his office, which escaped the San Francisco fire of 1906, but has also assisted me by a generous expenditure of time and thought in the discussion of important phases of the work.

I have been permitted by the Academy of Pacific Coast History to use the Bancroft Library of the University of California. Its valuable newspaper files were of great assistance.

The undertaking of this piece of research was made possible by the Flood Fellowship in Economics which I held while engaged upon it, and by financial assistance received from the Carnegie Institution. This study was completed in December, 1908, and does not contain the decisions and legislation subsequent to that date.

LUCILE EAVES.

CHAPTER I.

THE SAN FRANCISCO LABOR MOVEMENT.[1]

REASONS FOR THE LEADERSHIP OF SAN FRANCISCO.

The leadership of the labor movement, not only of California but also of the Pacific Coast, has centered in San Francisco. This has not been due merely to the financial and numerical strength possible to the organizations of a great center of population. The unions of San Francisco have furnished able leaders and the initiative in forming organizations for the entire region west of the Rockies. At times her central bodies have been representative of the wage-workers of other portions of California, and of Oregon, Washington, and Nevada. A history of the varying aims and strength of the San Francisco labor movement furnishes the key to an understanding of the California labor legislation, as there are but few important measures for the protection of the wage-workers of the state which cannot be credited to the efforts of the organized workers of this great industrial center.

Many factors have combined to give San Francisco this trade-union leadership in the West. Indeed, it might be safely asserted that these same causes tend, at the present time, to make this the chief stronghold of American trade-unionism. These factors may be described as:

1. Geographical factors, or the situation of San Francisco in its relations to the economic development of California.
2. The effects of the concentration of the population in the cities about San Francisco Bay.
3. The influence of the race elements composing the population.

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[1] This introductory sketch of the San Francisco labor movement was submitted as the author's doctor's dissertation in the Department of Sociology at Columbia University.

4. Historical factors that have promoted the development of trade-unionism.

Geographical Factors.

One has only to glance at a map of the Pacific Coast to realize the importance of this centrally located harbor, on a coast where the mountains crowd close to the oceanside, and where but few indentations permit a safe entrance for commerce. In the first great rush to the gold mines, a large part of the population of the state coming from other portions of the Union, and all of the foreigners, entered California by way of San Francisco. Supplies for the mining region were also first landed here and then reshipped to the interior points for distribution. The Sacramento and San Joaquin rivers emptying into San Francisco Bay were the two great natural highways making possible communication with the interior of the state. With the development of the agricultural resources of these rich interior valleys, San Francisco furnished the market for their products. The rapidly accumulating capital of the state found this the best place for investment in commercial and manufacturing enterprises. The rich came here to spend their money; the unemployed returned in search of new opportunities; this was the port of departure for the discouraged, or for those who hastened back to their families with what they considered a fair share of the wealth of the gold mines. Prior to the building of the overland railroads, during all of the important formative period, the economic life of the state centered in San Francisco.

Concentration of Population about San Francisco Bay.

These natural advantages have resulted in a concentration of the population of California in the cities grouped about San Francisco Bay. From 1870 to the present time, about one-third of the inhabitants of the state have been found in San Francisco and Alameda counties.[2] A strong labor movement is possible only in a great center of population. Such a center has the large number of skilled artisans who form the more permanent organizations and furnish intelligent leadership. Numbers not only give courage and enthusiasm, but also supply the economic support that is necessary to enable any group of wage-workers to enter upon a successful contest with their employers.

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[2] The percentages of the population of the state living in San Francisco and Alameda counties at the different decades when the United States Census has been taken were as follows: 1860, 12%; 1870, 31%; 1880, 34.3%; 1890, 32.5%; 1900, 31.8%.

This concentration of population has given San Francisco great influence in politics. The San Francisco vote has determined the state elections and was an important influence in national politics during the years when presidential elections were closely contested. As will be shown in the later discussion of the political activities of the trade-unions, the older political parties have never had a strong hold here. Whenever conditions are such that the large body of voters found in the labor organizations unite to obtain some object, they may hold the balance of power in any election. From early days politicians have found it necessary to court the favor of the San Francisco trade-unionist.

Race Elements.

Although San Francisco is one of the large cities of the United States in which three-fourths of the citizens are of alien parentage,[3] its population is composed of race elements quite different from those of the large cities of the East. The accompanying table shows the numbers of foreign males of specified nationalities in California, estimated on the basis of the per cent. of males among the foreign born at each decade:[4]

Decade	Total	Males	Males, % of Total	Irish	British	German	French	Spanish-American	Italian	Chinese
1850	21,802	20,439	93.	2,280	4,528	2,721	1,438	3,854	212	660
1860	146,528	116,934	79.	26,187	18,638	17,100	6,145	9,085	2,216	22.385
1870	209,831	150.058	76.	41,396	26,524	22,579	6,132	8,677	3,542	45,429
1880	292,874	208,526	71.	44,703	38,326	30,198	6,780	11,809	5,351	71,328
1890	366,309	252,525	68.	42,934	49,843	41,811	8,061	6,010	10,537	69,382
1900	367,240	240,237	65.	28,909	51,572	47,092	7,967	6,318	14,805	42,297

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[3] The cities in the United States in which the census of 1900 shows a high percentage of residents of foreign parentage are: Milwaukee, 82.7%; Chicago, 77.4%; New York, 76.9%; Cleveland, 75.6%; San Francisco, 75.2%; Boston, 72.2%.

[4] This table was compiled by Mrs. M. R. Coolidge, for use in her study of the Chinese. (New York, 1909.) She has kindly permitted me to use it.

We see from this table that among the foreign-born residents of California an unusually high percentage has come from English-speaking countries. The English or Scotch artisan, whether from the old country or from Australia or British Columbia, is accustomed to trade-union membership, and the ability of the Irish to control municipal politics is proverbial. The German trade-unions of San Francisco have been among the most successful and persistent. For many years there have been German-speaking unions of bakers, cabinet-makers, brewers, and in early days the majority of the cigar-makers were of this nationality. The Sailors' Union has furnished a training school for the San Francisco trade-unionist. Between 1889 and 1903, 13,796 men have left this organization to enter other occupations. Nearly one-half of these men were natives of Sweden, Norway, and Finland, and ten per cent. were German.[5] These sailors speak English and are staunch trade-unionists.

Independence, capacity for self-government, and power of initiative have always been characteristic of the frontier. Something of these pioneer traits belongs to the Californian who has emigrated from the older states of the Union. Its remoteness, and the great expense of reaching it from the Atlantic ports, have deterred the poorer classes of European immigrants from coming to San Francisco. Also, the presence of the Chinese has had a selective influence; the skilled artisans, or those possessed of some capital, have been attracted by its opportunities, while those who could compete only in classes of labor performed by Orientals have sought other fields. The work that attracts those least capable of organization for self-protection has fallen to the Chinese and Japanese, who are without franchise or political influence.

To sum up the characteristics of the population that have contributed to the success of trade-unionism in San Francisco, we find that the working people have come of races capable of forming self-governing organizations; that a process of selection has brought the more vigorous, prosperous, and intelligent to the

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[5] *Report of the Merchant Marine Commission*, 58th Congress, 3rd sess., Senate Reports, vol. 4 (serial no. 4758), p. 1209. Percentages of sailors discontinuing Pacific Coast trade: Sweden, .197; Norway, .185; Finland, .106; Germany, .100.

Pacific Coast; that the large percentage of English-speaking men in the voting population helps to make possible united political action in the interests of the working classes.

Historical Factors.

California has been unlike the other western states in that it had no territorial period of gradual growth, during which the inhabitants were scattered in the small communities that characterize the pastoral and agricultural states of economic development. No other great city in the United States has sprung into full municipal life so suddenly as San Francisco. In early days there was an entire absence of that conservatism that comes with the more gradual accumulation of wealth. Money could be made without resorting to the close calculations and careful management of older communities. The trade-unionist, fleeing from the black-list or the stubborn opposition of powerful, well-established employers, found, on reaching San Francisco, that no one knew anything about his past record, and that his efforts to organize his craft met with no opposition. Moreover, during all of the early period of the state's development, he was able to obtain about all he demanded.

Not only was prompt organization induced by the conditions found in San Francisco, but the comparative isolation has contributed to the success of trade-union activities. For many years there was no great industrial center between San Francisco and the Mississippi from which a supply of skilled labor could be drawn. Even to the present time there is difficulty and delay in obtaining any considerable force of strike-breakers. In early days these difficulties were almost unsurmountable. For example, when, in 1863, the bakers asked for increases in pay of from thirty to forty-five dollars per month,[4] their employers were obliged to submit to this extortionate demand,—at least until they were able to import men from Hamburg to take the places of the strikers.

On the trade-unionist of San Francisco has rested the responsibility for the campaign to exclude Oriental labor. He first realized the possible menace of the overwhelming numbers of workers who, through many generations of discipline in the crowded Orient, have learned to live under conditions impossible to the workmen of a younger civilization. This long camping in front of what was felt to be a common enemy has contributed more than any other one factor to the strength of the California labor movement. From the early fifties to the present time, there have been organizations in which all classes of wage-workers joined to promote the exclusion of Asiatic labor. It is the one subject upon which there has never been the slightest difference of opinion, the one measure on which it has always been possible to obtain concerted action.

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[4] *San Francisco Bulletin*, November 4, 1863. They were then receiving fifty-five and sixty dollars per month.

FORMS OF LABOR ORGANIZATIONS IN SAN FRANCISCO.

Before attempting the detailed account of the organizations of different periods, it will be profitable to notice in a more general way the characteristic forms which these organizations have assumed, and their relations to each other. They may be divided into three groups: (1) Trade-unions of the conventional type; (2) Societies formed for the promotion of special objects; (3) Political labor parties.

(1) There are evidences of such early trade-union activity in San Francisco that one is tempted to believe that the craftsmen met each other on the way to California and agreed to unite. In a society where all were strangers, the possession of a common trade would furnish the most natural and promptly recognized bond of union. While from this early date there has probably never been a time when San Francisco has been entirely free from trade organizations, the life of particular unions has not been continuous. They were frequently disrupted by some disastrous strike; in hard times their members, under pressure of necessity, have often abandoned the efforts to maintain the conditions in the trade demanded by the union, and have scattered to take work wherever it could be found. Yet always, with the return of prosperity, the trade-unions were reorganized to begin anew the struggle to obtain a larger share of the more abundant profits for the wage-worker.

There have been three periods of culmination of trade-union organization and activity in San Francisco. First, between 1867 and 1870; second, between 1886 and 1890; third, from 1901 to 1907. In each of these periods we find, not only an extensive organization of separate trades, but also effective central bodies whose influence was felt throughout the state.

The Knights of Labor, who had an extensive membership in California during the eighties, seem more closely related to the regular trade-unions than to the other forms of organization.

(2) The most important of the organizations for the promotion of special objects have been the anti-Chinese associations and the eight-hour leagues. These organizations have been closely akin to the trade-unions in that there has been an interchange of representatives. Thus in early days the anti-coolie clubs sent representatives to the labor conventions, and the present Asiatic Exclusion League is composed of duly appointed delegates from the various trade-unions. The eight-hour leagues have been even more intimately connected with the trade-unions. That of 1867-1873 was an organization of the house carpenters, though other trade-unions joined in the movement. The later league of 1889 was a representative body created by the Federated Trades Council, and when it disbanded its work was taken over by a standing committee of that body.

There have also been various somewhat spontaneous and erratic movements of groups of the unemployed, which have not been intimately connected with the regular labor organizations.

(3) The trade-unions have fully realized the disrupting power of politics; from early days their constitutions have contained clauses disclaiming all political activities. Yet the membership and leadership in the political labor parties have been drawn from the trade-unions. While the various national labor parties have had representation in California, the more successful political movements have been called forth by labor controversies growing out of conditions on the Pacific Coast.

California has furnished a fair field for every possible form of organization for improving the condition of the working people. Nowhere in the world has there been a more favorable economic environment, nor more absolute freedom for social and political experiments than was found in California during all the earlier periods of its development. The working people certainly made ample use of their opportunities. Not only have they tried every possible form of organization for regulating the relations of employer and employee, but in addition, have experimented with numerous coöperative schemes. From the rich variety of organizations of the seventies and early eighties, the trade-union emerged as the form of organization best adapted to our present economic system. It meets most adequately the *permanent* needs of the wage-workers, who now fully recognize the necessity for its maintenance. The other types seem to be falling into place as emergency organizations which can be formed when circumstances require special action. In general, the California trade-unions have been most active in periods of economic prosperity. In times of business depression they have served as a kind of balance wheel, helping to retain the favorable impetus given wages and the conditions of work in more favorable times. The energetic trade-unionist was apt, at such periods of depression, to turn his attention to special movements which he imagined might remedy the evils responsible for the general decline in business.

THE EARLY PERIOD OF TRADE-UNIONISM, 1850-1870.

The conventional type of trade-union was impossible in the placer mines of California, because there were no employers. However, there were miners' unions in all the camps,—meetings where the conditions under which the mines should be worked were freely discussed, and regulations binding upon the community agreed upon. These meetings expressed themselves in no uncertain terms upon the labor problems of the day. They heartily approved of the prevailing regime of absolute democracy and equality of opportunity, and vigorously opposed all efforts to introduce any class of servile labor. It was their influence that withstood all efforts to secure concessions to those desiring to admit negro slavery, and the miners were the first to legislate against the Chinese.

While these miners' meetings were political rather than economic in their functions, there is abundant evidence to prove that in San Francisco, Sacramento, and Stockton, the three most important municipal centers of this early gold-mining period, there was much trade-union activity during the fifties. These rapidly developing centers of distribution of the population and of supplies for the mining regions were in need of buildings of all kinds, so that carpenters, bricklayers, stonemasons, and hod-carriers were in great demand. We find frequent mention of their strikes to obtain better conditions of work, nor were the other trades slow in adopting the same policy. The house carpenters of Sacramento seem to have initiated this early movement, as they struck for higher wages in November and December, 1849.[7] In the following year the sailors,[8] bricklayers,[9] and musicians[10] conducted strikes; in 1851 the printers followed suit; while in 1853 there was quite an outbreak of strikes.[11]

As a rule the workmen had the sympathy of the public, and the employers generally acceded to their demands with but little resistance. While the strikers do not seem to have been disorderly, they occasionally called forth criticism by their high-handed methods; as, for example, when the striking firemen and coal-passers made all the passengers on an outgoing vessel show their tickets in order to make sure that no strike-breakers were among them.[12] The editor of the *Alta* ventures to administer a mild reproof, at the same time expressing a hearty approval of trade-unions and strikes.[13]

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[7] *Alta*, November 22, 1849; December 6, 1849.

[8] *Ibid.*, August 10, 12, 1850.

[9] *Ibid.*, September 11, 1850.

[10] *Ibid.*, October 26-7, 1850.

[11] In July and August, 1853, a few months after the passage of the ten-hour law, we find the carpenters, bricklayers, stonemasons, and hodcarriers of San Francisco, Sacramento, and Stockton engaged in strikes for higher wages. (*Alta*, July 8-19, August 7, 18, 1853.)

[12] *Alta*, August 2, 1853.

[13] *Ibid.*, August 3, 1853. He said: "It has been held by some authorities that combinations to raise wages are contrary to justice and to the policy of our laws, but that position can never be maintained by anyone who has a clear idea of justice or of the spirit of American institutions. . . . It is a matter of congratulation that the carpenters and stonecutters get eight to ten dollars for every faithful day's work in San Francisco. But though we approve of striking for higher wages if it is probable that they can be fairly obtained, yet we cannot approve of the manner in which some of the strikes and combinations have been conducted and maintained."

While these strikes were accompanied by public meetings, processions and other demonstrations, it seems probable that they were sometimes conducted by temporary organizations. We have found direct evidence of fully organized trade-unions among the printers,[14] the carpenters,[15] and the laborers of Sacramento.[16] Mr. Ira Cross, of Stanford University, who has made a careful study of these early trade-union activities, says: "During the fifties nearly all the trades in San Francisco had become organized and had succeeded in materially bettering the condition of the workers. The printers had formed a protective association as early as 1850. The teamsters, draymen, lightermen, riggers, and stevedores had organized in 1851; the bricklayers and bakers in 1852; the blacksmiths, plasterers, brickmasons, shipwrights, carpenters, and caulkers in 1853; while even the musicians had organized and had struck for the enforcement of the union scale in 1856."[17]

Even though organizations were formed in these trades, it does not necessarily follow that they succeeded in maintaining a continuous existence. The history of the printers' union is probably typical of the other trade-unions of this period. This was organized in 1850 with eight members, and increased rapidly in membership, having 100 on the roll in 1851 and 147 in 1852. It then fell to pieces and was reorganized with a national charter in 1855, only to go through the same experiences. The third attempt was more permanent, as the Eureka Typographical, chartered by the national union in 1859, lasted until 1870.[18] The history of the Ship Carpenters' Union affords another illustration of the instability of these early organizations. It was quite successful, and accumulated funds so rapidly that a discussion arose about the proper method of spending the surplus. Some of the members thought the laying of the Atlantic cable a suitable excuse for a special jollification, while others preferred some other method of emptying the overloaded treasury. The disputes on this subject finally disrupted the union.[19]

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[14] Organized late in the spring of 1850.

[15] *Alta*, July 19, 1853.

[16] *Ibid.*, August 7, 1853.

[17] First Coast Seamen's Unions, in *Coast Seamen's Journal*, July 8, 1908, p. 1.

[18] My information about the Typographical Union is drawn from the records of the union, which were destroyed in the fire of April, 1906.

In California, as in other parts of the United States, there was a strong trade-union movement in the sixties. In 1863 the scarcity of artisans, owing to the heavy drafts for the army, and the increased cost of living prompted a completer organization of the workers in New York, Boston, Philadelphia, and other eastern cities, and many strikes for higher wages. The conditions were by no means so hard in San Francisco, as gold had continued to circulate in California, and the prices of necessities had not advanced so much as in the East.[20] Nevertheless the eastern labor movement was promptly duplicated in San Francisco.

In the fall of 1863 the first central trades assembly was formed in San Francisco. As this organization was conducted as a secret society, it is difficult to find contemporary information about it. The editor of the *Alta*, writing in 1867, says, "About seven years since a Trades Union was organized in the East intended to include in its councils representatives from every state. A body was formed in California to take part in this Union, but it fell to pieces in 1864."[21]

John M. Days, a state senator, was the first president of this Trades Union.[22] He was succeeded by A. M. Kenaday who had been secretary. Kenaday, who was a delegate from the Eureka Typographical Union, gives the following history of this first central body: "The riggers and the stevedores and the printers formed a nucleus around which in a few months, we organized some eighteen trade organizations in this city. As its chosen secretary, I labored incessantly, against all manner of reproach, to make it effective. When it was about to dissolve for want of encouragement, I was selected as its presiding officer, and, at my suggestion, we made an appeal to the organized workingmen to rally in a mass meeting to agitate an eight-hour law."[22]

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[19] *San Francisco Daily Report*, May 11, 1886.

[20] Editorial, *Bulletin*, December 11, 1863. The same number of the *Bulletin* reprints accounts of the strikes in New York, Boston, and Philadelphia taken from eastern papers.

[21] *Alta*, June 2, 1867.

[22] The account of this first trades union given in the *San Francisco Daily Report*, May 11, 1886, and that written by Burdette Haskell in McNeill's *The Labor Movement the Problem of Today*, seem to have been written by the same person, or possibly the newspaper copied Haskell's article. The article is not accurate. It says that there were *fourteen* unions at the end of the first year, and that a *year* later the number had decreased to six.

This first central council was formed at a period of great trade-union activity; as in the East, one trade after another struck for higher wages. The interesting labor situation in San Francisco at this time can be best shown by quoting an editorial from the *Bulletin* of November 6, 1863:

> "Striking for higher wages is now the rage among the working people of San Francisco. There are few employers that have not felt the upward pressure within three months, and probably some branches of business that hitherto proved fairly profitable are now pursued at a loss, on account of the increased expenses of labor. Doubtless in many cases the wages paid in the early part of the year, when more men were in the City than could find employment, were unreasonably low. It is only just that workingmen should improve the present occasion, when the rush for distant mines has drained the city of its surplus population, to compel the payment of fair wages for their services. Under wise counsel the various trades unions can now do something to permanently improve the condition of those who labor for hire. But great care should be taken not to overdo the thing. The multitude of men who have gone out from all parts of the State to the mines of the adjacent Territory, added to the 50,000 immigrants who are supposed to have come over the plains from the western states this summer, are all now within a few days' travel of San Francisco. The winter is at hand, and the mines are so poorly provided with comforts that many thousands now engaged in 'prospecting' would gladly hasten to San Francisco, if the inducements of sufficient employment to procure board and clothing during the inclement season were held out. . . . Continual strikes for higher wages have the effect to create the impression abroad that there is a scarcity

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[22] A. M. Kenaday came to California in 1847 and left to return in the gold rush. He was president of the Typographical Union which he organized in 1851. He was a charter member of the Typographical Union of 1855, and took an active part in organizing the Trades Union. In an address delivered in 1890 he said that he had in his possession a pamphlet printed in 1867, entitled "The Record of the Eight-Hour Bill in the California Legislature, Session 1865-66, embracing an account of the Preliminary Agitation of the Subject by the Workingmen of the State, the Debates in Senate and Assembly, the means resorted to by its enemies to defeat the measure, and the records of its friends and opponents. Prepared at the request of Theophilus Tucker, and Jer. J. Kelley, Special Committee of the Trades Union, by A. M. Kenaday, Special Agent selected by the Mechanics and Workingmen, and late President of the Trades Union of San Francisco." If one may judge by the title, this must have been a somewhat voluminous account. Since Kenaday had this contemporary account on which to base his remarks, it is probable that the information given in this address is fairly reliable. The remarks quoted are published in the *Pacific Union Printer*, December, 1890.

Kenaday was expelled from the Workingmen's Convention of 1867, because he issued a call for a state convention without authority. (*Bulletin*, May 10, 1867; *Daily Times*, May 1, 1867.)

of laborers here. We do not believe such to be a fact, but that there is simply no great surplus. Let our well-employed men enforce as nearly as possible uniform rates of wages, and in no case make unreasonable demands simply because they have the power to enforce them, and they will receive the sympathy and encouragement of all without increasing the competition for their places which a general disturbance of the labor market would bring upon them.''

Unfortunately, not all of the trade-unions were willing to take this sage advice. Evidently some of them failed to realize that there were limits to the possibility of gaining increased wages, even under such extraordinary conditions as were prevalent in California at that time. Hitherto the employers had yielded to their demands, at least for the time being, but in 1863 and 1864 we find them forced to adopt a different policy. We have already referred to the extreme example of trade-union demands, that of the bakers in November, 1863.[24] While their employers were obliged to pay the additional thirty to forty-five dollars per month demanded, they hastened to import bakers from Hamburg, who gladly worked under worse conditions than had prevailed before the strike.

In April, 1864, the foundrymen reached the limit of their willingness to accede to the demands of their workmen. At this time the moulders and boiler-makers went on strike, demanding an increase of fifty cents to a dollar, making their wages range from four to five dollars a day.[25] The proprietors of the foundries declared that they had already advanced wages to the limit of what was possible to pay, and still compete with eastern productions. One foundryman employing twenty-five men offered to advance the wages of seventeen of the journeymen in his employ, but refused the uniform advance demanded.[26] The moulders sent out circulars warning other workmen not to come to San Francisco, and firmly refused to make any concessions.

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[24] *Bulletin*, November 4, 1863.

[25] *Alta*, April 3, 8, 1864; *Labor Clarion*, September 4, 1908, p. 34. The *Daily Report* of May 11, 1886, gives the following account of the Moulders' Union. ''The Ironmoulders' Union was organized in 1867, and almost immediately thereafter entered upon a strike for higher wages. Large numbers of men were induced to come hither from New York and other eastern cities, and although the union was mainly successful in so far as gaining the objects of the strike was concerned, the ultimate outcome was the disruption of the organization.'' This account is manifestly incorrect.

[26] *Alta*, April 3, 1864.

The members of the other San Francisco trade-unions were disposed to support the moulders,[27] though their support took the form of resolutions of sympathy rather than the liberal financial assistance common in later times. As wages in the eastern foundries were much lower than in California, it was possible, by advancing the cost of passage, to obtain men to take the place of the strikers. It is evident that the proprietors carried out this plan,[28] but they must also have taken back their old hands, for the Moulders' Union was not disrupted, or, if it disbanded, was quickly re-organized, for in 1867 both this union and the boiler-makers' are reported as holding regular meetings.[29]

These instances where employers found it more profitable to obtain workmen from a distance than to submit to the demands for increased wages seem to have served as warnings to the trade-unions,[30] for during the last half of this decade we find them turning their attention to other ways of improving their condition. Instead of engaging in trade-union bargaining for higher wages, they sought to safeguard themselves from the competition of Chinese labor, and to secure legislation protecting their wages and shortening the working day.

For the promotion of measures of this kind organizations more general in scope than those of the workers in different crafts were necessary. During this period we find for the first time unions of the workingmen of the entire state. The San Francisco Trades Union was succeeded by the Industrial League of California, an organization which was divided into two branches: No. 1, with Sacramento as its center, was supposed to include the northern part of the state, while No. 2, with headquarters at San Francisco, had jurisdiction over the southern section.[31] There had been anti-coolie associations in San Francisco as early as

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[27] *Ibid.*, April 8, 1864.

[28] April 12, 1864.

[29] *Industrial Magazine*, January, 1867.

[30] Evidently this action of the employers made a deep impression on the minds of the workingmen of San Francisco. We have seen the reference to it in the article from the *Daily Report* of May 11, 1886, and a recent history of the Bakers' Union also gives the incident full notice. (See *Labor Clarion*, September 4, 1908, p. 36.)

[31] *Alta*, editorial, June 2, 1867.

1862, but they now multiplied rapidly in numbers,[32] and formed a state organization with a central representative council and various subordinate councils.[33] The Mechanics' State Council was organized in 1867. This was an outgrowth of the Carpenters' Eight-Hour League, and devoted itself largely to the propagation of the eight-hour movement.[34]

The *Industrial Magazine*, a monthly devoted to the interests of the wage-workers, appeared in January, 1867. It announced in its first number that it was "issued for the avowed purpose of strengthening the combinations of Industry, and assisting the efforts of those striving to secure the advantages and privileges of our advancing civilization." During the three months that it survived, this magazine gave ample notice to the eight-hour movement, the anti-Chinese agitation, and the coöperative societies. It also published a "Directory of Workingmen's Associations", from which we learn that the following societies held regular meetings: Industrial League No. 2, Eureka Typographical Union No. 21, Plumbers' Protective Union, Bricklayers' Protective Association, Journeymen Stone-Cutters' Union, Operative Stone Masons' Society, Laborers' Protective Association, Tin Smiths' Protective Association, Moulders' Association, Boiler-Makers' Society, Plasterers' Protective Association, Ship and Steamboat Painters' Association, Ship and Steamboat Joiners' Association, Journeymen Shipwrights' Association, Ship Caulkers' Association, Journeymen Horse-Shoers' Association, Shoemakers' Protective Association, Cartmen's Association. Evidently this list is incomplete, for in the Workingman's Convention which met in April, 1867,[35] there were representatives from these additional unions: saddle and harness makers, house carpenters, No. 1 and No. 2, coopers, metal roofers, curriers, machinists, riggers, and stevedores, making a total of twenty-six organizations.

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[32] There were in 1867 twelve anti-Chinese clubs in San Francisco, one in each district.

[33] *Bulletin*, July 12, 1862; May 14, 1867.

[34] For the completer account of its work, see Chapter VII, "The Length of the Work-Day in California" (p. 206, etc.).

[35] *San Francisco Daily Times*, April 10, 1867.

THE WORKINGMEN'S CONVENTION OF 1867.

The National Congress of Workingmen held in Baltimore in August, 1866,[36] suggested a similar meeting in California. Early in 1867 the Industrial League No. 2 issued a call for a convention of workingmen to meet in San Francisco on March 29. This call requested the organized trades and societies to appoint five of their members to represent them in the convention. It provided that those trades that were not organized might also select from their numbers "five men of known integrity" as their representatives. All delegates must be workingmen, taken from the ranks, thoroughly identified with the working classes, and free from party politics. Notice was given that societies formed on a political basis, having politicians at their head, need not send delegates.[37]

The convention opened with 140 delegates, who represented the anti-coolie clubs of the twelve districts of San Francisco, and the various trades.[38] A later account says that thirty-two trades and all the anti-coolie clubs sent delegates.[39] The convention promptly effected a permanent organization[40] and appointed a committee to draft resolutions on the following subjects for submission at the next meeting: An eight-hour law, a mechanics' lien law, legislation against Chinese immigration, the founding of coöperative stores and manufactures.[41]

At the second session of the convention the question of the advisability of sending delegates to the National Labor Convention which was to convene at Chicago in the following August was discussed. It was suggested that the workingmen of California should not attempt more than they had power to do, and that, so long as they were unable to settle the problems that confronted them here on the Coast, it was useless to talk of sending delegates to a national convention.[42] The preamble of the report of the committee on resolutions expresses the same distrust of older political parties noticeable in the resolutions of the Baltimore National Congress,[43] and also voices the need of united political action on the part of the working people. It reads: "Whereas, After the lapse of more than a quarter of a century of passive indifference to their own rights and interests, the mechanics and workingmen of the United States have awakened to the necessity of uniting together for the enforcement of their own interests; and being convinced by sad experience that the professional office-seekers of all parties have no interest or sympathy with the cause of the workingmen except to get their votes, they, in self-defence, have been forced into the necessity of assuming control of their own affairs and of relying upon themselves for success. For this purpose they have already organized associations in almost every branch of labor and formed the associations into state organizations, with a view of holding state and national conventions of workingmen, in order to present their claims for reform to the public at large, and thus invest the cause of labor with a national importance, and inasmuch as the workingmen of this state are suffering under the same grievances and disabilities which our brethren of the Atlantic and western states are seeking to remove, it becomes our duty, in furtherance of our interests, to do all in our power to unite the workingmen of California in the bonds of fraternity, so as to concentrate their influence, and direct it in such a manner as to insure compliance with our just demands."[44]

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[36] McNeill, *The Labor Movement*, etc., pp. 133-134.

[37] *Industrial Magazine*, March, 1867.

[38] *Bulletin*, April 1, 1867.

[39] *Alta*, June 2, 1867.

[40] The following officers were elected: President, J. J. Ayers; Vice-Presidents, A. T. Enos and A. M. Gray; Secretary, Dickson; Treasurer, J. W. Wilkerson; Sergeant-at-Arms, Hughes.

[41] *Bulletin*, April 1, 1867.

At the next meeting the plan for political action in the interests of the working classes was given more definite form. In a resolution, which was carried almost unanimously, it was moved "that a committee be selected from this convention consisting of one member from each delegation to draft a workingman's platform, embodying all justly needed reforms, calling the attention of the workingmen to such measures of self-protection as the exigencies of the time may require, urging the formation of workingmen's unions in all the cities and towns throughout the state, calling upon the people to drop and forget all political distinctions and work in harmony for the good of all.''[45]

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[42] *San Francisco Daily Times*, April 10, 1867.

[43] McNeill, *The Labor Movement*, etc., p. 134.

[44] *Bulletin*, April 3, 1867.

This committee was also directed to report a plan for the thorough organization of all the workingmen's societies of the state under one head. The president vacated the chair in order to present his plan for the appointment of a correspondence committee of five, whose duty it should be to enter upon a systematic correspondence with workingmen of all parts of the state upon subjects suggested by the convention. The members of the convention were called upon to suggest the names of persons in the interior towns and cities who would be suitable corresponding agents to coöperate with this committee.[46]

At the meeting of April 30, the committee on the platform and address brought in a lengthy report. This urged the passage of a mechanics' lien law, an eight-hour law, the repression of coolie labor, and the abstinence from politics so far as they did not concern the interests of the workingmen. This report was unanimously adopted, and fifty thousand copies were ordered printed for distribution.

Evidently the reference to politics simply meant that the workingmen should devote themselves to their own party, for at the same time that the report of the committee was adopted, an additional resolution was passed to the effect ''that this committee believes that the most advisable means of arriving at success in the object for which our convention has been convened is to act in our primary capacity as citizens, and to vote for proper representatives from among ourselves at the primary elections, and they [*sic*] should, therefore, as citizens and favorable to the working classes, elect only such delegates as this convention shall have recommended.''[47]

Pursuant to this plan, it was decided that delegates from each district of San Francisco should nominate persons for the primary ticket. These were reported and, after some discussion of the qualifications of a few of the nominees, a complete primary workingmen's ticket was placed in nomination. When the returns of the primary election of June 5, 1867, came in, everyone was surprised to find that the Workingmen's Party had won a large majority.[48]

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[45] *San Francisco Daily Times*, April 10, 1867.

[46] *Ibid.*, April 10, 1867.

[47] *Ibid.*, May 1, 1867.

The workingmen had planned to nominate Assemblyman Wilcox, who had championed the eight-hour law in the 1866 session of the Legislature, for Congress. They were unable to carry out this plan as he withdrew. It was claimed that he received a financial consideration for doing so.[49] But undoubtedly this show of political strength was one of the chief factors contributing to the passage of the eight-hour law, the mechanics' lien law, and the act for the protection of wages, at the 1868 session of the legislature.[50]

On the whole, the Workingmen's Convention of 1867 was a memorable body in the history of the California labor movement. It was the first large assemblage of the representatives of the wage-workers of the state; it helped make possible the passage of three of the most important labor laws on our statute books; it planned the first successful Workingmen's Party,[51] and won the first political victory in San Francisco; it was the culmination of the labor movement of the sixties; and inaugurated the efforts to unite the working people of the state in political activities, thus initiating the form of activity that was to be most characteristic of the labor movement of the next decade.

During the years immediately following the first demonstration of the political power of the labor organizations, the attention and the energies of the California trade-unionist were absorbed in the eight-hour movement.[52] While the eight-hour day was generally introduced in the building trades, the attempts to enforce it in other occupations soon led to strikes. Not only did the employers again resort to the importation of strikebreakers, but many competitors were brought by the large influx of immigrants seeking to escape the business depression which followed the Civil War, which was much more severely felt in eastern states than in California. It soon became evident that the period when the wage-worker could demand whatever he chose was past; already there were signs of the hard times of unemployment that were to be characteristic of the seventies.

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[48] The *Alta*, June 6, 1867, says that the Workingmen elected twenty-five delegates, but the *Times* of the same date says that they elected twenty-three and that the People's Party elected thirteen.

[49] *Alta*, July 12, 1867.

[50] A more detailed account of the efforts to pass these laws will be given in subsequent chapters.

[51] There had been a Workingmen's Party in Sacramento prior to this time, but it was unsuccessful. *San Francisco Daily Times*, April 10, 1867.

[52] The more detailed account of the eight-hour movement will be given in Chapter VII, dealing with the legislation on this subject.

THE LABOR MOVEMENTS OF THE SEVENTIES.

This period was marked by a radical change in the economic conditions in California. The Central Pacific Railroad was opened in 1869, thus bringing California into closer touch with other sections of the country. The men who had been employed in the construction of this road were turned back into other avenues of employment, and their numbers were swelled by the increased immigration from other states of the Union. The Burlingame Treaty, which by its favorable terms had seemed to invite immigration of Chinese, had been concluded in 1868 regardless of the protests of the Californians. Subsidized steamships gave increased facilities, and impelled by famines at home and offers of richly rewarded employment in California, the Chinese were pouring into San Francisco in numbers which, at times, averaged two thousand per month. As a result of this business depression and increase of competitors, the trade-unions were unable to retain the wages and hours of labor which they had won during the sixties. Only a few of them maintained a continuous existence during this period of extreme depression. While the agitation for the eight-hour day was carried over into the seventies, the chief organized activity on the part of the working people took the form of a great variety of anti-Chinese societies.

As the Chinese question must be dealt with by state and national legislation, we are not surprised to find that there was a strong tendency throughout this period to go into politics. Many historians have treated the Workingmen's Party of 1878 as though it were a sudden, isolated phenomenon. Such was by no means the case; it was but the culmination of the political activities of organizations of workingmen during the previous ten years.

This was also the period when the California organizations came into closer touch with the eastern labor movement. A. M. Winn, the president of the Mechanics' State Council, went to Washington in 1869, and spent some months in an unsuccessful effort to secure the passage of an amendment to the national eight-hour law which should positively require that all public work, whether done by the day or under contract, should be subject to the eight-hour work-day requirement. He was chosen chairman of the National Eight-Hour Executive Committee, which was composed of the presidents of state and national organizations of mechanics.[53] M. W. Delaney was also sent as a delegate of the Mechanics' State Council to the meeting of the National Labor Union at Chicago in 1870. A letter from him, read at the meeting of the State Anti-Chinese Convention of August, 1870, gives a glowing account of his success in stirring up anti-Chinese feeling among the delegates to this convention.[54] He returned with authority to grant charters to branches of the National Labor Union in California.[55]

It is impossible to distinguish clearly the many forms of labor organizations which sought to find remedies for the hard times of the seventies. The only principle of unity in these manifold combinations for the agitation of labor problems was their opposition to the Chinese. We will content ourselves with a brief summary of the history of the more important organizations in the order of their origin, noticing (1) the trade-unions, (2) political parties, (3) anti-Chinese societies.

(1) Trade-unions Surviving, 1870-1880.

While one hears but little of the regular trade-unions during this period, it is evident that some of them maintained a precarious existence. Attempts were made to form them into federated unions in 1874 and 1878. The tailors made the first of these attempts. It is said that six unions came together and drew up a constitution, but they fell to quarreling over the question of whether they should have a permanent or temporary chairman, and failed to complete their organization. Another attempt to form a trades assembly was made during the early stages of the Workingmen's Party. Haskell says there were fourteen unions in this assembly, with a total membership of 1,500.[56] It continued to meet in a somewhat irregular way until 1882. Thus it is evident that, though inactive, some of the trade-unions held together during this period.

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[53] Winn, *Valedictory Address.*

[54] *Alta,* August 24, 1870.

[55] *Bulletin,* March 15, 1871.

The Carpenters' Eight-Hour League was reorganized, soon after the return of A. M. Winn from his eastern trip, into a branch of the Eumenic Order of United Mechanics.[57] For a few years this body continued to agitate in favor of the eight-hour day, particularly in work for the public,[58] and then it dropped out of existence. The carpenters reorganized their union in 1882.[59]

The last notices of the Mechanics' State Council which we have found appeared in 1877,[60] so that this organization which came into existence during the eight-hour campaign of 1867 survived for ten years. This was chiefly due to the persistent activity of its president, A. M. Winn.[61] Indeed it is claimed that during the later years his list of unions represented was fictitious, as some of them had ceased to exist.[62] While chiefly devoted to the cause of the eight-hour day, we find this organization also active in the formation of anti-Chinese societies.

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[56] Haskell, in McNeill, *The Labor Movement*, etc., 609. In the sketch of the life of Frank Roney, the first president of the Federated Trades Council, it is claimed that he suggested the formation of this Trades Assembly as the first Workingmen's Council. (*San Francisco Daily Report*, May 11, 1886.)

[57] Winn, *Valedictory Address.*

[58] *Alta*, May 3, 28, 1873.

[59] *Organized Labor*, February 8, 1902.

[60] *Alta*, January 14, May 12, 21, 23, 1876; November 6, 1877.

[61] A. M. Winn was born in Loudoun County, Virginia, and went to Vicksburg, where he became a brigadier-general of the militia. He came to California in 1849, was the first Mayor of Sacramento, and commanded the militia in the difficulties with the squatters. He was a contractor and builder, and on coming to San Francisco engaged in the planing-mill business. He founded the organization known as the Sons of Revolutionary Sires, and was also one of the originators of the Native Sons of the Golden West. He died August 26, 1883.

[62] *San Francisco Daily Report*, May 11, 1886.

(2) Political Parties, 1870-1877.

Early in 1870 the meetings of the unemployed began in San Francisco. They were followed in July by a great anti-Chinese demonstration, which was led by the Knights of St. Crispin, an organization of shoemakers.[63] At this meeting it was decided to call a State Anti-Chinese Convention to convene in the following month. When this convention met a part of the delegates, led by the Knights of St. Crispin, were in favor of nominating a political ticket, and another faction, under the leadership of the Mechanics' State Council and the eight-hour leagues, were opposed to all separate political action, claiming that more could be accomplished by using their influence with the older political parties.[64] When it became evident that the convention would nominate a municipal ticket, these latter organizations withdrew, and afterwards formed a separate society known as the Industrial Reformers.

The remaining members of the convention proceeded to organize as a branch of the National Labor Union. They adopted a platform which declared, in addition to favoring the eight-hour law, that "the conditions of labor should be positively fixed by the laws of the Nation. Free labor must not be made to compete with labor in restraint, nor should labor under our system of civilization be allowed to come into competition with a lower order of men and system of civilization."[65] They opposed the election of any candidate who employed Chinese or favored their admission to the state. Before adjourning, they nominated a complete municipal ticket.[66]

While the members of this organization declared themselves to be acting as a branch of the National Labor Union, the organization of the California branch of the society does not seem to have been perfected until March, 1871.[67] From that time until

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[63] *Alta*, July 9, 16, 1870.

[64] Winn, *Valedictory Address*, p. 5.

[65] *Alta*, August 11, 12, 17, 19, 20, 24, 1870. See p. 138.

[66] *Ibid.*, August 31, September 16, 1870.

[67] *Bulletin*, March 15, 1871.

1878[68] the California branch of the National Labor Union maintained a continuous existence. While it did not meet with success in electing its candidates, there is abundant evidence of its political activities. It held a large ratification meeting in December, 1871, to endorse the candidacy of G. W. Julian for the presidency.[69] A month later the State Labor Convention met in San Francisco. A lengthy platform was adopted,[70] which is interesting because of its resemblances to the platform of its offspring, the Workingmen's Party of 1877-1878. Among the measures advocated in this platform were the following:

> "First—The disenthralment of labor by the equalization of the wages of labor with the income of capital.
>
> "Second—The establishment of an equitable rate of interest for the use of money.
>
> * * * * * * * *
>
> "Seventh—The maintenance of an eight-hour system of labor.
>
> "Eighth—The establishment of a Labor Bureau at Washington for the better protection of the industries of the country.
>
> "Ninth—The Government holds the public land in trust for the use and benefit of the people; that it should be distributed to actual settlers only in limited quantities, not exceeding 160 acres, at cost of survey and distribution, . . . all unimproved land shall be taxed the same as though settled, and improved . . .
>
> * * * * * * *
>
> "Eleventh, . . . we declare in favor of universal compulsory citizen suffrage, and secular education.
>
> "Twelfth—That Government should assume control of all chartered and subsidized corporations, and regulate their charges upon principles of equity and exact justice, and enforce such regulations as will best secure the interests and safety of the people."

The convention also advocated the election of the President, Vice-President and Senators by the direct votes of the people, and urged that the treaty with China be amended to prohibit Chinese immigration.[71] Six delegates were appointed to attend the National Convention of the party.[72]

In May the Executive Committee of the Labor Party of

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[68] *Alta*, January 22, 1878.

[69] *Bulletin*, December 26, 1871.

[70] *Ibid.*, January 26, 1872.

[71] *Ibid.*, January 26, 1872.

[72] *Ibid.*, January 27, 1872.

California met and passed resolutions declaring that the undivided support of all true labor reformers in the state was pledged to Judge Davis and Joel Parker.[73]

In June the Executive Committee announced that at all future elections the Labor Party of California would place nominees before the people for each elective office who would be true representatives of the industrial policies and political views of the party. It was proposed that nominees should be elected by ballot at elections called by the committee in the respective labor unions.[74] We have been unable to find whether this plan of nomination was ever carried out by the National Labor Party, though it was adopted by the Workingmen's Party in nominating candidates for the Constitutional Convention of 1878.

In 1873 we hear of the National Labor Union obtaining six thousand names to an anti-Chinese petition.[75] We have not attempted to follow this organization during the next three or four years when people of all classes joined in the great demonstrations in favor of Chinese exclusion.[76] While it did not achieve any noteworthy successes, its continuity seems probable, for in July, 1877, we find the National Labor Union calling the meeting to express sympathy with the Pittsburgh strikers, which set in motion the chain of events that led to the formation of the Workingmen's Party.[77]

We find some confusion of parties in the organizations of 1877-1878. At first Dennis Kearney and his friends organized as a branch of the Workingmen's Party of the United States. In California this seems to have been regarded as the successor to, or identical with, the National Labor Party. Haskell says Kearney was refused admittance to the Workingmen's Party of the United States.[78] The historians of the California Workingmen's Party explain the organization as an independent party as being due to some doubt of the right of the section to act without authority from the central body at Chicago.[79] They effected their organization in August, and in the September municipal election polled nearly six thousand votes.

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[73] *Bulletin*, May 29, 1872.

[74] *Ibid.*, June 15, 1872.

[75] *Alta*, May 25, 1873.

[76] The author has not had time to make the exhaustive examination of the newspaper files of this period necessary to obtain this information about the activities of the National Labor Union.

[77] Report of Joint Committee on Labor Investigations, *Appendix to Journals of Senate and Assembly*, 22d Session, Vol. 4.

[78] McNeill, *op. cit.*, p. 609.

The older party, which still retained the name of National Labor Party, held its regular state convention in January, 1878, at which the following resolution was adopted:[80]

> "Whereas, A National Convention in the interests of labor is to be held at Toledo, Ohio, on the 22d of February pursuant to a call signed by Wendell Phillips and Peter Cooper, and other well-known friends of the people; therefore, be it
>
> "Resolved, That this convention do now proceed to the election of six delegates from the National Labor Party of California, and the President and Secretary are hereby authorized to issue to such delegates the proper credentials; and further
>
> "Resolved, That the State Executive Committee are authorized and empowered to elect delegates to any other National Convention that may be called in the interests of labor before this convention is again convened."

(3) *Anti-Chinese Societies, 1873-1876.*

We have already given accounts of the formation of anti-Chinese societies in 1862, 1867, and 1870. At a later date the scope of these societies was extended to include the whole Pacific Coast. The People's Protective Alliance was formed in May, 1873, by the union of the Workingmen's Alliance of Sacramento, the anti-Chinese associations of San Francisco, and the Industrial Reformers, for the purpose of securing the united action of the working people of the Coast. This had primary associations, county assemblies and a grand council, and entered upon a vigorous campaign in California and Oregon.[81] These efforts of the workingmen were so successful that by 1876 the anti-Chinese societies and demonstrations were no longer confined to their organizations, but were general in scope. The meetings were then called, and the investigations made by the authority of the state legislature, and the municipal officials.

We have now traced the history of two state organizations which had continued to hold meetings for from eight to ten years prior to the organization of the Workingmen's Party of California. We have shown that one of these was a state political party with national affiliations. The anti-Chinese societies of this period were even more effective in educating the working classes of the state to concerted action, as they were more active than the general labor organizations. Also, the subject of their activities was one which aroused the passions of the working people, giving an emotional impulse that helped in the development of a strong, sympathetic consciousness of common interests. Thus we see that the way was fully prepared for a successful state Workingmen's Party. It remains only for us to study the events that brought about the culmination of these forces that had been in preparation since 1867.

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[79] Stedman and Leonard, *The Workingman's Party of California*, p. 5.

[80] *Alta*, January 22, 1878.

[81] For the more detailed accounts of the work of this association, see the chapter dealing with anti-Chinese legislation.

THE WORKINGMEN'S PARTY OF CALIFORNIA, 1877-1879.

When we begin our analysis of the causes that made possible the successes of the Workingmen's Party, we are first met by the fact that there was much discomfort, if not actual suffering for the necessities of life among a large number of the poorer citizens of the state. Economic conditions had been going from bad to worse. There was a drought in the winter of 1876-7, the grain crop failed and the cattle died. At the same time the output of the mines was greatly decreased. San Francisco was the natural focusing point of all the economic bitterness and discontent which the hard times called forth. The large numbers of unemployed who paced her streets and gathered in the sand-lots gave the increased force of numbers to the sufferings of the times, and the suffering was often turned into bitter discontent by the ostentatious displays of the wealth of some of the newly-rich of the city.

Many of the wage-workers who did not lack the actual necessities of life were brought into closer sympathy with the unemployed by their losses due to the decline in stocks, in which all classes had learned to speculate. The bitterness towards capitalists which shows so frequently in the sand-lot oratory was due not merely to resentment of the manifest economic inequalities but also to the corruption of the business life of the time. There was a well-founded suspicion that some of the losses that had swept away the savings of the poor were due to the corrupt mismanagement of those in charge of the business enterprises.

No explanations are needed to account for the strong anti-Chinese feelings of the movement. Such feelings had been diligently cultivated among the working people of the state for the past twenty years, and they were, of course, aggravated by the sight of hundreds of white men who were in need of the work which the great hordes of newly arriving Chinese seemed able to obtain.

The attention of the state was focused upon the economic situation in San Francisco by the dramatic events which immediately preceded the launching of the Workingmen's Party. In July, 1877, the National Labor Party called a meeting on the sand-lot in front of the City Hall to express sympathy with the Pittsburgh strikers. Flights of oratory and resolutions adapted to the purposes of the meeting were indulged in, but there is no evidence to prove that the gathering had any lawless intent, or was directly responsible for the attacks on the Chinese wash-houses that followed.[32]

The term "hoodlum" is said to have originated in San Francisco, and was coined at about this time to describe a class of rough and lawless youths. Tormenting inoffensive Chinamen was one of their chief forms of diversion. While the meeting was in progress, they started a fire in a wash-house, and during the following night attacked several other Chinese laundries in different portions of the city. These were scattered through the residence portions of the city, and San Franciscans have always had good cause to dread fires.

As there was much wretchedness and discontent as well as a large lawless class in the city, these events caused some uneasiness. A meeting of citizens was called to consider the situation. Possibly the presence of W. T. Coleman, the originator of the Vigilance Committees of the fifties, may have suggested a similar movement. The whole matter of making plans for the preservation of the peace was turned over to him. He welcomed the opportunity to repeat his exploits of twenty years before, and promptly enlisted over five thousand men in his Committee of Public Safety. A supply of firearms was obtained from the government arsenal at Benicia, and war vessels from Mare Island were brought to anchor in front of the city. For ordinary occasions the members of the Committee of Safety patrol which he organized were armed with pick-handles.[83]

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[32] Report of Joint Committee on Labor Legislation, *Appendix to Journals of Senate and Assembly*, 22d Sess., Vol. 4, 1878. Compare also the account by Henry George, in *Popular Science Monthly*, Vol. 17, p. 433. (August, 1880.)

The only evidence of an outbreak was the firing of the lumber yard near the Pacific Mail dock. As this dock had been frequently threatened because of its connection with the Chinese traffic, it was believed that it would be attacked. The fire department, the police and the Committee of Safety patrol succeeded in dispersing the large crowd that gathered, no one receiving any serious injuries except one of the guards whose gun exploded.

Naturally these extraordinary proceedings occasioned great excitement in San Francisco, and aroused interest throughout the state. There has been much difference of opinion on the question whether there was any real necessity for the Committee of Safety, many persons claiming that the regular authorities could and should have done all that was necessary to preserve the peace. Henry George, who was in the city at the time, was among those who claimed that there was no occasion for such a body. He thought that this extra-legal organization, coupled with the well-known history of the Vigilance Committees of the fifties, suggested to Kearney and his associates many of their ideas about forming a special organization which should dispense a rough justice, and carry out the reforms demanded by the people, in case it proved impossible to obtain them through the regular political machinery.[84] This seems the more probable from the fact that Kearney was a member of the "pick-handle brigade."

The meetings of the National Labor Party had been suspended during this excitement, but they came together again in August to prepare for the elections. Unlike most organizations of this kind, it did not cease its activities after the election. At the meeting of September 12, the first platform of the California Workingmen's Party was adopted. In this the chief emphasis is placed on the corruption of the existing political parties, and the need of provisions that would secure a better representation and protection of the interests of the workingmen by the state government. This platform declared:

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[83] Coleman, "San Francisco Vigilance Committees," *Century*, Vol. 43, p. 145.

[84] *Popular Science Monthly* (August, 1880), Vol. 17, p. 433ff.

> "Whereas, The contending political parties of the country having through lack of principle or of statesmanship, failed to meet the growing wants of this rapidly growing country; and,
>
> "Whereas, Their past history furnishes no points of honesty whereon the workingmen can hang any hopes of their future good behavior; then be it
>
> "Resolved, That the workingmen sever all affiliation with existing political parties and do hereby organize for the purpose of good and equitable government a new party to be called the Workingmen's Party of California, having in view the following reforms in politics:
>
> "First—The abolition of the assessment on candidates for office, the people to own the offices, not the incumbents.
>
> "Second—Holding State and municipal officers to strict accountability for their official acts.
>
> "Third—The establishment of a Bureau of Labor and Statistics.
>
> "Fourth—The immediate reduction, and periodical regulation thereafter of the hours of labor.
>
> "Fifth—The creation by the State Legislature of a Convention on labor with headquarters in San Francisco."[85]

At a meeting held a few days later it was announced that the movement had "for its primary object the extirpation of the Chinese curse; that this should be the grand keynote of the warfare." It is said that Kearney concluded all his speeches with the declaration, "The Chinese must go!"

In this, as in the subsequent expressions of the speeches and platforms, we find the assumption that the workingmen are now about to enter politics for the first time. It never seems to have occurred to anyone that they were in the majority, and that their votes had helped to elect the much-abused, and unfortunately justly abused, politicians.

The first of the famous sand-lot meetings was held on September 16, a few days after the adoption of the platform, and a mass meeting in Union Hall followed on the 21st. The papers reported the most sensational parts of the intemperate oratory of Kearney and his followers, and the meetings gained rapidly in numbers.[56] While no actual violence was committed as a result of the meetings, the bold talk of the virtues of fire and hemp as correctors of social abuses aroused much uneasiness, particularly when a meeting was held on Nob Hill, where the railroad magnates had their homes.[57]

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[85] Stedman and Leonard, *The Workingmen's Party of California*, p. 17.

The successes of the Workingmen's Party outside of San Francisco were very largely the result of the arousing of class consciousness, and feelings of resentment due to what appeared to be unjust persecution of the leaders of the movement, and an oppressive invasion of the rights of free speech and assemblage by the San Francisco authorities. Kearney and other officers of the party were repeatedly arrested and held on excessive bail, though no conviction was obtained to justify their detention. The resolutions of the Sacramento mass-meeting show how this action was regarded by many of the working people of the state. These expressed their sympathy with "the friends of freedom", and declared that they "regarded Kearney and Knight, each, as a John Brown in this, the second irrepressible conflict." They called upon the workingmen and their friends in every county, town, city, and hamlet to organize branches of the party at once, and prepare for a campaign that would enable them to draft a constitution which should place the government in the hands of the working people.[58]

The "gag laws" passed by both the San Francisco supervisors[59] and the state legislature[60] were peculiarly out of harmony with the liberty, almost amounting to license, that often characterized the speech of the early Californian. For example, these provisions from Section 54 of what was spoken of as "Gibb's Gag Ordinance," have a decidedly un-American sound: "It shall be unlawful for any person to use or utter any words, language, or expression, conveying or suggesting any threat conditional or otherwise for the purpose of wrongful intimidation. These provisions shall apply whether the intimidation is intended for the community, or for a class or for one or more persons, and whether said person or persons are present or absent at the time of use or utterance of said words, or language, or expression."[91]

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[56] The daily papers gave full notices of the performances of the Workingmen's Party. We will give the dates of important events, without attempting to furnish detailed references, as they can be easily found in the newspaper files.

[57] San Francisco daily papers, July 24, September 22, November 1 to 7, 1877, give reports of meetings, etc.

[58] Quoted in Stedman and Leonard, *The Workingmen's Party of California.* (A contemporary account.)

[59] Passed November 24, 1877.

[60] Passed January 19, *Acts Amendatory to the Codes of California*, 1877-8, pp. 117-8.

Not only was the freedom of speech encroached upon, but the right to meet for the discussion of their grievances was also invaded. The first state convention of the party had to be held secretly, because the Mayor of San Francisco had issued a proclamation forbidding public assemblies. False notices of the place of meeting were published to mislead the police, while the accredited delegates were secretly informed of the correct hall. Even with these precautions, the police discovered the place, and arrived fifty strong when the session was half concluded.[92]

The special committee of the legislature appointed to investigate the labor troubles in San Francisco declared that after the Mayor's proclamation the workingmen offered no resistance to the dispersal of their meetings. It adds, "On the contrary, your committee found by competent testimony, that under this proclamation the police officers in several instances, entered halls where peaceably disposed citizens were assembled for the purpose of discussing the Chinese question and the best means of ameliorating the condition of the working classes, and without waiting to know the nature of the proceedings or to learn whether any infraction of the law was contemplated or advocated by the speakers, ordered such assemblage to disperse." The committee also charged that the police had arrested the leaders of the meetings on their platforms in the presence of excitable crowds, and that they had handled the prisoners roughly, and used their clubs freely on the crowds. The minority report testifies "The quiet, patience, and resignation exhibited by the workingmen in the dispersion of their meetings, and the vigorous handling which they received at the hands of the police on these occasions is greatly to their credit. That there is great want, destitution, and squalid poverty in San Francisco, there is no room for doubt."[93]

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[91] Stedman and Leonard, *op. cit.*, pp. 46-7.

[92] The convention met January 21, 1878. The police found no cause to disperse the meeting.

What stronger combination could one have for the triumph of the new party? For years the workingmen had been familiar with the idea of a separate labor party that should remedy the evils of their lot. They had joined in the great anti-Chinese campaigns of the years immediately preceding, and were growing impatient at the long delays in the response to the demands for exclusion, and inclined to suspect that the state officials and representatives had not done their whole duty in executing the will of the people in this matter. The hard times brought suffering to all classes, and now when this new party, organized by the workingmen of San Francisco, arose confidently proclaiming its ability to remedy the political and economic wrongs of the time, it was met with the most outrageous persecution that trampled on all those time-honored rights which are most dear to a liberty-loving people.

So the clubs of the Workingmen's Party multiplied with a wonderful rapidity in all the wards of San Francisco. The foreign-born citizens organized and the doctrines of the new party were promulgated to enthusiastic groups of Germans, French, Scandinavians, and Italians. A large German-speaking section of the Socialistic Workingmen of the United States was absorbed into the ranks, and their representative, a lawyer named Beerstecker, was afterwards sent to the Constitutional Convention. The newspapers had given the party unlimited free advertising by their extensive reports of the extravagant oratory of the sand-lots, and of the many dramatic incidents connected with its early history, so the way was prepared for the rapid organization of the clubs in the cities and towns of the state.

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[93] Report of the Joint Committee, *App. Journ. Sen. and Ass.*, 22d Sess., Vol. 4 (1878). Compare the accounts of Stedman and Leonard, and Henry George.

Soon there were flourishing groups in the more important centers of population as far south as Los Angeles. Successes in the municipal elections of Oakland, Sacramento, and in the choice of a state senator to fill a vacancy in Alameda County, and an assemblyman from Santa Clara County, gave promise of a more sweeping victory when the members of the Constitutional Convention were chosen.

But it was not all smooth sailing, as there were violent dissensions within the ranks of the party. Kearney had reason to suspect that many of the ward presidents and officers of the clubs were cherishing political ambitions of their own. He appealed from the decision of the majority of his State Executive Committee to the audience of the sand-lot,[94] to obtain support for the self-denying ordinance, or non-eligibility resolution, which he promulgated to curb the ambition of these members who were pulling wires to promote their own election to the Constitutional Convention. This resolution declared that no member of the county or state executive committees, or any officer of a club or trade-union affiliated with the party, should be eligible as a candidate for any political office, nor should any such be permitted to resign his position to accept a political nomination. Some of the ablest leaders of the party were alienated by this resolution, and their unsuccessful attempts to organize a rival party caused some confusion. As the more aggressive members who were familiar with parliamentary practice had naturally been elected to office, this resolution undoubtedly deprived the party of the services of men who would have been much more effective members of the Constitutional Convention than many of those who were elected.

The elaborate plan adopted for nominating candidates for office was believed to insure the choice of men entirely satisfactory to the party. The candidates were first to be apportioned to the different wards by the ward presidents, in open session. Then the clubs of each ward were to hold joint sessions at which they nominated persons, who were members in good standing, for the positions. A week later the balloting took place, after which it was necessary to have the elections ratified in mass-meetings of the wards, and at last by the great sand-lot assemblage.[95]

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[94] It was afterwards endorsed in the meetings of May 4 and 16, 1878. (May 4, by ward presidents; May 16, state convention.)

Two lengthy platforms were adopted by the Workingmen's Party; one at the state convention of January 21, and another at the convention of May 16, when the Kearney branch of the party won its final victory over the seceders. We will content ourselves with a condensed summary of the more striking features of these platforms.

1. Chinese cheap labor was declared to be "a curse to our land, a menace to the liberties and the institutions of our country, and should therefore be restricted and forever abolished."

2. The granting of the public lands to corporations was declared to be robbery, and all lands so held should revert to the people, for the use of actual settlers. Individuals should not be allowed to hold more than one square mile of land. Lands of equal value should be subject to equal taxation, without reference to improvements.

3. Money, bonds, and mortgages to be subject to taxation.

4. Malfeasance in office to be punished by imprisonment for life, without intervention of the pardoning power. In the second platform this was modified to punishment as a felony. The legislator who violates his pledges given to secure his election should be punished as a felon. Lobbying around the State Capitol while the Legislature is in session to be forever prohibited.

5. The lakes and rivers of the state to be held as public property.

6. The rate of interest on money to be limited to seven per cent.

7. The contract system of prison labor to be abolished, and the goods produced in prisons and reformatories to be sold at the market rates of the products of free labor.

8. Labor on public works to be performed by the day at current rates of wages.

9. Eight hours is sufficient for a day's work; such work-day should be established by law.

10. There should be no special legislation, and the laws should be ratified by the people.

11. Women to receive equal pay with men for work of equal value.

12. Compulsory education for children under fourteen, the text-books to be supplied by the state. A special fund to be maintained for the assistance of indigent children so that they may attend school. Lectures to be given in the public schools at stated intervals, setting forth the dignity of labor and mechanical avocations as paramount to all other walks in life.

13. Public officers to receive a fixed salary, and fees to be accounted for as public moneys.

14. The President, Vice-President and Senators to be elected by popular vote.

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[95] Stedman and Leonard, *op. cit.*, pp. 75-6. This plan was adopted on May 4, 1878.

The provisions of these platforms did not originate with the Workingmen's Party. We have seen that many of them were contained in the platform of the National Labor Party adopted in 1872; others are directly traceable to the Knights of Labor, who organized their first California assembly in Sacramento in 1878.

INFLUENCE OF THE WORKINGMEN'S PARTY ON THE CALIFORNIA CONSTITUTION.

The coming Constitutional Convention seemed to afford a direct and permanent form of legislation, and the workingmen hoped to embody this varied program of reform in the new constitution. As June 19, the day of the election, approached, they bent every energy to the work of securing a strong representation in the convention. When the election returns came in, it was found that they had elected fifty-one of the hundred and fifty-two delegates, thirty-one of their members coming from San Francisco. Of the non-partisan ticket, seventy-eight were elected, including thirty-two delegates-at-large. Eleven Republicans, ten Democrats, and two independents made up the remaining members of the convention. A number of the non-partisan delegates were Grangers who united with the Workingmen in support of their measures. The campaign, exclusive of cost of tickets voted, cost the workingmen only $300.

Though many of the delegates of the Workingmen's Party were so ignorant and unfamiliar with parliamentary usage that they were not effective on the floor of the convention, still the voting strength of the party was sufficient to insure the passage of a number of their measures. An examination of the California Constitution shows that they succeeded in embodying in it a large part of their platform, though most of the more radical innovations have since been declared invalid.

The constitution goes beyond its powers in the efforts to deal with the Chinese question. They are forever excluded from exercising the privileges of electors.[96] Their employment by corporations or on any state, county, municipal, or other public work is forbidden.[97] The legislature is empowered to make laws imposing conditions on which they may reside in the state, and providing for their removal on failure to comply with these conditions.[98] It is also charged with the duty of imposing penalties for the importation of coolie or contract laborers, directed to do all in its power to discourage or prohibit further Chinese immigration, and to pass laws permitting the removal of the Chinese without the limits, or to certain districts, of the cities and towns of the state.[99]

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[96] Constitution of California, Art. I, Sec. 1.

[97] *Ibid.*, Art. XIX, Secs. 2, 3.

The convention found itself unable to do much more than express its convictions on the question of land monopoly. The constitution declares that "The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property."[100] In accordance with this policy it authorizes the assessment of uncultivated land of the same quality and situation at the same value as the cultivated.[101] It also directs that "Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law."[102] The legislature is authorized to pass laws protecting certain portions of the homestead and other property of heads of families from sale.[103]

The constitution contains a number of regulations aiming to increase the burdens of capital and to regulate and restrict the operations of corporations. Moneys, credits, bonds, stocks, dues, franchises, mortgages, deeds of trust, or other obligations by which a debt is secured, are all subject to taxation.[104] The legislature is authorized to regulate the charges of public service corporations furnishing gas, telegraph service, water, storage, and wharfage.[105] All corporations must be formed under general laws, and these are subject to changes by the legislature.[106] To the section of the older constitution holding their stockholders individually and personally liable for a share of the debts or liabilities of corporations, proportional to the amount of their stock or shares, is added the provision that the directors and trustees are liable to the creditors and stockholders for money embezzled by the officers of the corporation during their term of office.[107]

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[98] *Constitution of California*, Art. XIX, Sec. 1.

[99] *Ibid.*, Art. XIX, Sec. 4.

[100] *Ibid.*, Art. XVII, Sec. 2.

[101] *Ibid.*, Art. XIII, Sec. 2.

[102] *Ibid.*, Art. XVII, Sec. 3.

[103] *Ibid.*, Art. XVII, Sec. 1.

[104] *Ibid.*, Art. XIII, Sec. 1, Sec. 4.

[105] *Ibid.*, Art. IV, Sec. 33.

The constitution has a strong section on the subject of lobbying in the state legislatures: "Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature who shall be influenced, in his vote or action upon any matter pending before the Legislature, by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. . . ."[108]

The constitutional prohibition of local or special legislation[109] has not been beneficial to the working people of the state, as it has been construed to invalidate various attempts to legislate for their protection.

The constitution instructed the legislature to pass laws providing for a mechanics' lien,[110] the eight-hour day on public work,[111] and for the regulation of the labor of convicts.[112]

The Workingmen's Party owes its success to a spontaneous uprising of the wage-workers expressing itself in a way with which they had become familiar during the preceding years of the labor movement. It was a protest against the business and political corruption of the times, an effort to find relief for economic distress, an expression of class feeling that had been voiced in the bitter and extravagant oratory of the sand-lot, and given literary form and extended influence by the newspapers; the whole movement being greatly assisted at every stage of its development by the folly of the San Francisco municipal authorities.

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[106] *Constitution of California*, Art. XII, Sec. 1.

[107] *Ibid.*, Art. XII, Sec. 3.

[108] *Ibid.*, Art. IV, Sec. 35.

[109] *Ibid.*, Art. IV, Sec. 25.

[110] *Ibid.*, Art. XX, Sec. 15.

[111] *Ibid.*, Art. XX, Sec. 17.

[112] *Ibid.*, Art. X, Sec. 6. These laws will be treated more fully in the subsequent chapters dealing with the subjects.

The leaders of the movement were crude, ignorant men, devoid of any real statesmanship. They were incapable of either conceiving or executing any consistent programme of reform. Their platforms were a restatement of the measures of older labor parties, and suggested no unified policy. The unlimited self-assurance of a man like Kearney may win temporary confidence, but the native common sense of the American workman soon discovers a lack of solid attainments. Even with abler leadership it is doubtful whether the party could have been held together, for the history of the next twenty years proves that much additional discipline was necessary to bring the California labor organizations to the state of development where they were capable of continuous, unified activity.

We have seen that there were defections within the ranks of the party before the election for the Constitutional Convention. With the adoption of the new constitution, the reception of news of the first congressional action on the Chinese question, and an improvement in the economic conditions, the motives for the maintenance of the Workingmen's Party were weakened. While it continued to be influential in the San Francisco elections for two or three years, it was soon evident that it was not to be a permanent power in the state. When James Bryce visited California in 1883, he found the people in San Francisco somewhat irritated at the disposition of eastern writers to magnify the importance and significance of this chapter in the turbulent political history of the state.[113]

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[113] Bryce, *American Commonwealth*, Vol. II, pp. 425-448.

GROWTH TOWARDS A UNIFIED TRADE-UNION MOVEMENT, 1878-1885.

Aside from any political significance, the Workingmen's Party had a permanent educational value in promoting unity of feeling and action on the part of the labor organizations of the state. We have already referred to its efforts to form a central representative assembly of the trade-unions of San Francisco. *The Cigar Makers' Appeal*[114] publishes the proceedings of this body in July, 1880, so it is evident that it survived. The same number of this paper gives a directory of unions which contains twenty-one names. It seems probable that this list was incomplete, as it does not include the ironmoulders, though this is one of the unions mentioned in the minutes of the Representative Assembly of Trades and Labor Unions. A later list of trade-unions in the report of the Labor Commissioner for 1887-1888 also gives additional unions which claimed to have been organized in the later seventies,[115] probably under the stimulus of the Workingmen's Party.

The period of greatest activity of the Representative Assembly was in 1881-2. Ira Cross thinks this was due to the energetic leadership of Frank Roney,[116] the representative sent from the Seamen's Protective Association in June, 1881.[117] This activity took the form of another great anti-Chinese demonstration, to which representatives, not only from California, but also from Oregon and Nevada, were summoned. The convention which met in April, 1882, organized the League of Deliverance for the purpose of continuing its work.[118] An attempt was made to enforce a general boycott of Chinese goods, but this failed as even the workingmen could not be made to purchase the more expensive products of white labor. The plan was changed, and an effort was made to enforce boycotts on those dealing largely in Chinese-made goods. But this also failed, as those conducting the boycott were repeatedly arrested.[119] The passage of the exclusion law of 1882 decreased the need of the League, and both this and the Trades Assembly soon dropped out of existence.[120]

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[114] I have been able to find only one copy of this weekly paper, that of July 21, 1880.

[115] *Third Biennial Report, Bureau of Labor Statistics*, pp. 128-131.

[116] Frank Roney was one of the ablest of the early California labor leaders. He was born in Belfast, Ireland, in 1841, and had received a good education. At an early age he suffered imprisonment for over a year on account of his activity in the movement for the overthrow of the English rule in Ireland. After his release he traveled on the Continent, where he was initiated in the famous revolutionary Order of the Carbonari. On his return to Ireland, he renewed his activities, being elected a member of the newly planned Provincial Council. The day before its first meeting its members were arrested. After spending ten more months in jail, Roney was sent to America. On coming to this country he continued his career as an organizer by entering the labor movement. Before coming to California he had been the first president of the Nebraska Labor Reform Party, and a contributor to the *Workingmen's Advocate*. He came to California in 1874, and we soon hear of him in the Workingmen's Party. He was president of one of the ward clubs, chairman of the first state convention, and member of the state executive committee. He wrote the constitution and plan of organization of the party. But he soon fell out with Kearney, and was the leader of the defection at the time of the non-eligibility resolutions. He next became a socialist, and we hear of his activities among the seamen, who were peculiarly in need of some effort for their betterment. In addition to these manifold public activities, Roney pursued the trade of an ironmoulder. (*San Francisco Daily Report*, May 11, 1886. Compare the account by Ira Cross, in *Coast Seamen's Journal*, July 8, 1908, p. 2.)

THE KNIGHTS OF LABOR.

In the interval between 1882 and 1885, the Knights of Labor supplied the need for a central labor union in San Francisco. Since the establishment of the first Sacramento Assembly in 1878, they had increased rapidly in power. Between 1879 and 1882 they organized eight local assemblies in San Francisco, and in September, 1882, these were united to form District Assembly No. 53. During the next three years the number of assemblies in California increased to twenty-five. While the California assemblies refrained from promoting any local strikes, they are said to have contributed generously to the support of assemblies in eastern states engaged in controversies.[121]

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[117] *Coast Seamen's Journal*, July 8, 1908, p. 2.

[118] Mass-meetings under the auspices of the Trades Assembly were held on February 15 and 16. See *Bulletin* and other papers of February 16 and 17, 1882. The convention met on April 24, 1882; see daily papers of April 25.

[119] A vivid account of this attempt at boycott is given in the speech of Haskell before the convention meeting in December, 1885. See *San Francisco Daily Report*, December 7, 1885. Roney, the president of the Trades Assembly, was arrested for boycotting, but was acquitted. Haskell says Starkweather, who carried the placard in front of one of the stores, was arrested nineteen times.

[120] McNeill, *The Labor Movement, etc.*, p. 609.

[121] *San Francisco Daily Report*, November 28, 1885.

THE INTERNATIONALISTS.

The International Workingmen's Association, an organization of socialists, was also quite active in the formation of trade-unions during this period. The California Internationalists included among their organizers a number of men of ability and great devotion to the cause, though they were the most radical of the early California labor leaders. Their enthusiasm and highly idealistic but impracticable teachings enabled them to arouse the interest of the workingmen, and made them effective preachers of the new gospel of united effort. But they were very troublesome when the organizations reached the point where they were ready for the sober management of the business affairs of their members. The Knights of Labor found it necessary to expel the socialists from their assemblies, and in time, the trade-unions that had been organized by the Internationalists freed themselves from their influence.[122]

Early in 1885 the Internationalists called a convention for the purpose of again forming a central labor union. Two hundred and fifty delegates are reported to have attended on the opening night of the convention, but there must have been an immediate defection, as only half that number are said to have been present on the second night.[123] After some discussion, a platform and list of organizers were produced which at once made it evident that the convention was completely dominated by the socialists.[124] The trade-unions of Internationalist affiliations held a few meetings, but the new Central Labor Union soon fell apart. Haskell, who was the chief promoter of the enterprise, charges its defeat to the politicians in the trade-unions; but it seems more probable that the older, more conservative unions objected to the pronounced socialistic tendencies of the movement.[125]

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[122] We have been able to follow the history of Internationalist influence in detail in the case of the Coast Seamen's Union, which they organized in 1885.

[123] *San Francisco Daily Report*, March 17, 19, 30. McNeill, *op. cit.*, p. 609.

[124] It declared that hard times were due to the monopolization of natural resources, tools of production, and medium of exchange by nonproducers, and favored state employment of labor and nationalization of land, means of transportation, and implements of production, as furnishing the only satisfactory solution of the labor question. All but one member of the organizing committee were Internationalists.

THE CONVENTION OF 1885.

Late in 1885 another convention was called by the Knights of Labor for the purpose of discussing the need of further legislation against the Chinese, and the question of contract prison labor. On November 30 some two hundred delegates, among whom were representatives from the Los Angeles Trades Council, the Stockton branch of the Internationalists, Sacramento Knights of Labor, Vallejo mechanics, machinists of Storey County, Nevada, and from Oakland and Alameda unions, in addition to those sent from the San Francisco organizations.[126] Though called by the Knights of Labor, the convention quickly passed from their control to that of the Internationalists and the trade-unions under their influence. Frank Roney was elected chairman, and B. G. Haskell, with a large following of seamen, was the most influential member on the floor of the convention. The passage of the radical resolution calling for the removal of the Chinese in sixty days resulted in the withdrawal of the

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[125] "Haskell was born in Sierra County, California, June 11, 1857, his parents being among the earliest pioneers of the state. After graduating from the public schools he was sent to college, but remained there for only a short time. He then interested himself in the study of law and was admitted to the bar in 1879. . . . He soon tired of the law, and when, in 1882, he was given an opportunity of taking charge of a weekly paper, he quickly assented to the proposition. . . . Thus it was that the latter became the editor of *Truth*.

"Several numbers of the paper had been issued when one evening Haskell happened to attend a meeting of the Trades' Assembly in search of news. He sat and listened to the proceedings and finally offered to make his paper the official organ of the body. . . . After some discussion the offer was accepted.

"At that time Haskell knew nothing whatever about trade-unionism or the labor problem. He came of wealthy and aristocratic parents and had never become interested in such matters. However, as the weeks passed he read all of the available literature and in a short time became the best-posted man on the labor question in the western states. As he read and studied the situation, he became an ardent socialist.

"*Truth* suspended publication after having been issued for a few years, but by this time Haskell had become one of the foremost men in the labor movement. In 1883 he founded the Pacific Coast Division of the International Workingmen's Association and in a few months had succeeded in organizing branches of the order in all the territory west of the Rocky mountains."—Ira Cross, in *Coast Seamen's Journal*, July 8, 1908, p. 7.

[126] *San Francisco Daily Report*, December 1, 1885.

Knights of Labor, and several of the more conservative trade-unions.[127]

When the questions for which the convention had been called were disposed of, the need of a permanent central body was brought before the delegates. Haskell's resolution indicates that there was a general tendency towards federation at that time. It is also interesting as the first suggestion of the plan of organization of the Council of Federated Trades. It declares:

> "Whereas, The iron trades unions, five in number, are federated; the building trades, seven in number, are being federated, and the maritime trades, nine in number, are also being federated; and
>
> "Whereas, Miscellaneous wage-workers in Assemblies of the Knights of Labor are practically federated by the District Assembly,—
>
> "Resolved, That these federations should be perfected; that all other trades-unions should combine in a miscellaneous federation, and that the delegates of all these federations should meet and act together for the general good of the working people, for the purpose of federation, and of completing the organization of the trades-unions of San Francisco."

In accordance with these suggestions the convention before its adjournment perfected plans for the organization of a new central body which began its meetings in January, 1886, and was at first burdened with the somewhat cumbersome title of "Representative Council of Trades and Labor Federation of the Pacific Coast." About a year later the name was abbreviated to "Federated Trades of the Pacific Coast." A review of the history of this new central council published five months later says that after its organization "internal dissensions arose, and from the first to the present time the work of steering the ship of federation through the straits has been such as to reflect credit upon those who have guided it. It can no longer be doubted that there is a united sentiment among the workingmen of the Coast."[128]

THE FEDERATED TRADES OF THE PACIFIC COAST, 1886-1892.

The new federation of trades proved itself the most energetic central body that had yet been organized. Its officials testified in 1892 that during the early years of its existence "tons of literature" were distributed for the purpose of educating the public to an appreciation of the value of trade-unions. The membership increased rapidly, so that during this first year thirteen thousand trade-unionists were represented in the Federated Trades Council. It was decided to employ a paid secretary who would give his whole time to the work of the Council.

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[127] *San Francisco Daily Report*, December 3, 7, 1885.

[128] *Ibid.*, May 11, 1886.

As in the case of the earlier central bodies, this large initial membership was not maintained. Two years later the State Labor Commissioner reported that though seventeen organizations were still represented in the Council there had been a decline in its membership. The Typographical Union had attempted to discover the reasons for this decline. Their committee reported that inquiries among the withdrawing unions had elicited a variety of answers. The ironmoulders said they had withdrawn because of the lack of financial support from the unions forming the Council, and because of the ordering of the Spreckels boycott while it was evident that the Union Iron Works strike would be lost. The patternmakers had decided that they would gain more from affiliation with their National League. The steamship stevedores with a membership of 750 found their pro rata strike assessments too high, and also resented the efforts of the Council to make them support a rival water-front organization. While the iron trades complained of the insufficiency of the strike fund, the tailors' union declared that it would have nothing to do with the Council while it continued to levy strike assessments. The report concludes with the following recommendations: "In conclusion your committee wish to report that in the light of all the information they have obtained, the arguments they have heard, and the motives which seem to actuate the friends and enemies of the Council of Federated Trades, they believe that the Union, in its own interests, and for the good of organized labor, should continue its active and earnest support of the Federation; that no good and probably great harm would be done to the interests we have most at heart, by the withdrawal of this Union; that our delegates should set an example of earnest work to the lukewarm and selfish in and out of the Federation; that the Federation should have sufficient financial help from all unions to enable it to carry on its work in a thorough and becoming manner; that we can see no way in which good could come of destroying what has been builded with the mere hope of building better on the ruins of what now is a useful, though comparatively small gathering of labor unions."[129]

This temperate and public-spirited point of view seems to have prevailed to an extent that protected the Federated Trades from the fate of its predecessors. Indeed, if we may judge by its activity, it was not greatly weakened by the decline in numbers, as this left a more wieldy body of genuinely interested members, who succeeded in exerting a wider influence than had been possible in any previous central body.

To a greater extent than ever before or since, San Francisco was the center of organization for the whole Coast. Several trades, as the brewery workers and coast seamen, had central bodies in San Francisco, and branch unions in Oregon, Washington, and in other parts of California. Sub-councils were organized in Los Angeles, Sacramento, San Jose, and Port Costa, and an active correspondence kept up with central bodies in other Pacific Coast states and territories.[130] Even the unions of British Columbia found the San Francisco Federated Trades ready to help fight their battles.[131]

Not only did the Federated Trades differ from earlier central bodies in the extent of its organization, but also in its aims and policies. Its objects as set forth in the declaration of purposes of the first constitution, were declared to be: ". . . extending, strengthening, and perpetuating the organization of labor on the Pacific Coast; to improve its present social condition; to resist the imposition of additional burdens; to mitigate the evils of unjust and unnecessary legislation; to enforce existing laws in favor of labor, and especially those in favor of eight hours as a day's labor, and against contract convict, and Mongolian competition, and to disseminate knowledge, and in every practical way advance the material welfare of the workers, individually and collectively. . . .''[132]

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[129] *Third Biennial Report, Bureau of Lavor Statistics*, pp. 114-15 By 1890 the Federated Trades Council regained its former membership.

[130] *Fifth Biennial Report, Bureau of Labor Statistics*, p. 40.

[131] The vigorously pressed Wellington coal boycott was for the benefit of the coal miners of British Columbia.

The Australian ballot was the most important of the general public measures fostered by the Federated Trades. Over a thousand dollars were spent in the protracted campaign which finally secured its adoption in 1892. With the coöperation of the State Labor Commissioner the first laws for the protection of women and children wage-workers were passed, and also the measures requiring sanitary conditions in workshops. The agitation for the shorter work-day was promoted by a special Eight-Hour League and by a permanent standing committee of the Council. Affiliations were established with the American Federation of Labor, and President Gompers was brought to the Coast to assist in the eight-hour campaign. The Federation also took an interest in finding work for the unemployed and in securing a representation in the newly formed San Francisco Chamber of Commerce. No previous central labor union had developed such wide connections or shown a disposition to interest itself in such varied public measures.

With the development of greater strength and confidence in the support of public opinion, the fear of publicity was lessened, and since May, 1889,[133] the meetings of this central body have been open to the public, and no pledge of secrecy exacted from its members.

NEW TRADE-UNION AIMS AND METHODS, BOYCOTTS AND STRIKE BENEFITS.

The new trade-union aims and methods promoted by the Federated Trades had even greater significance in the development of the California labor movement than the public measures advocated. Hitherto there had been little to arouse the antagonism of the employers. For twenty years the united efforts of the California workers had been chiefly devoted to securing legislation protecting the wage-worker from the competition of Chinese and convict labor, insuring the payment of wages earned, and shortening the work-day. Their employers were often willing to join in the support of these measures. With the exception of the eight-hour movement of 1867-1869, there had been no extensive united effort to force concessions from employers. The individual unions expected little more than moral support from fellow trade-unionists when engaged in strikes.

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[132] *Fifth Biennial Report, Bureau of Labor Statistics*, p. 53. The policies as developed were more original than suggested by this declaration.

[133] *Coast Seamen's Journal*, May 1, 1889. Minutes of Federated Trades Council.

We have seen that through the long struggle to exclude the Chinese, by means of the teachings of the Knights of Labor, and the Internationalists, the working people of the Pacific Coast had attained to a strong consciousness of unity of interests. The Federated Trades Council developed means for utilizing this unity of feeling, not alone in promoting general legislation, but also for the support and defense of particular groups of workers engaged in contests with their employers. The boycott and the strike benefit which were now introduced not only furnished effective expression for this new sense of unity but gave a different significance to the whole labor movement. A review of the history of the most important boycotts and strikes of this period will show clearly the new power gained by the trade-unions, and the provocation that called forth the first organized opposition from the employers.

The contest waged by the San Francisco Federated Trades on behalf of the miners of British Columbia is interesting, not only because it illustrates this wide-spread consciousness of a common cause, but also as an example of the methods used for enforcing boycotts in this period of their greatest development. The president of the Miners' Protective Association of Vancouver Island came before the Council with an appeal for assistance for the employees of Alexander Dunsmuir and Sons. They complained that their long hours were extended by the custom of reckoning their time from the actual commencement of work in the mine, as there was often much delay between the time of reporting for duty at the entrance of the mine, and that when they were permitted to go to work. Though paid by the ton, they were refused the eight-hour day. Their earnings were also reduced by the necessity of purchasing supplies at the company store, at what they claimed were extortionate prices.[124] As the coal was marketed in San Francisco, they appealed to their fellow trade-unionists in that city for assistance, and the Federated Trades Council at once acknowledged the claim. As was customary, the case was referred to the executive committee for investigation and an attempt at peaceful settlement. But the committee sent to interview members of the firm in San Francisco were refused an audience, on the ground that the firm had declined to meet a committee of the miners, and intended to deal with its employees only as individuals.[125]

Never before had the San Francisco trade-unionist met with the denial of the right to organize, and for the first time a committee of the Federated Trades Council was refused an audience. The contest was no longer merely an economic one, but was reenforced by stronger feelings of outraged pride, and the belief that questions of fundamental human rights were at stake. So the boycott was declared and for nearly two years, as long as the old Federated Trades continued its existence, it was pressed with the utmost vigor. Even after the discouraged miners had given up the contest, the San Francisco trade-unionists continued the fight.[126]

When the boycott was declared, steps were at once taken to present the case fully to the different unions of the city. These readily pledged their support, many of them appointing special committees to assist in its prosecution. The endorsement of a boycott generally meant that the individual members of the union were subject to a fine if they failed to observe it. A committee of seven members of the Federated Trades Council was appointed for the general supervision of the boycott, and they were soon permitted to employ a man who gave his entire time to watching the coal carts in order to discover the customers of Dunsmuir. At each meeting of the Council during the succeeding months different unions reported their successful efforts to persuade coal-dealers, factories, hotels, saloons, restaurants, laundries, and private parties to withdraw custom from the offending firm. At one time three men were employed in ferreting out persons using the coal. The Stockton Federated Trades were called upon to enforce the boycott against customers in that place. Circulars were sent out warning members of the unions and possible customers of the boycott; on October 30, 1891, it was reported that five thousand of these circulars had just been sent to the retail liquor dealers.[137] Those who persistently refused to comply with the requests to withdraw their patronage from the offending firm were in turn subject to boycott. We find the barbers agreeing to withdraw their custom from a certain laundry in case it continued to use the boycotted coal. While no other boycott during this period received quite so much attention as this, its history shows the methods adopted in many other cases.

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[124] *Examiner*, June 14, 1890, p. 2.

[125] *Coast Seamen's Journal*, June 25, 1890.

[126] In November, 1891, the strike was declared off, but in January, 1892, we find the executive committee of the Federated Trades recommending an additional per capita tax of $1 per delegate for the prosecution of this boycott. (*Coast Seamen's Journal*, Minutes of Federated Trades for November 13, 27, 1891; January 8, 1892.)

THE FIRST ORGANIZED OPPOSITION OF THE EMPLOYERS

The first contest between organizations of employers and employees was that between the Brewers' Protective Association and the brewery workmen beginning in 1888. The difficulty did not originate in California, but was part of a general movement of the United States Brewers' Association to maintain the open shop.[138] On refusal of one of the breweries, called the United States Brewery, to comply with the contract to employ none but union men, a boycott was declared by the Federated Trades Council. Alfred Fuhrman, the general secretary of the brewery workmen, gives the following account of the methods used to make this boycott effective: "In order to enforce the boycott we issued circulars and had parades, and did anything that was lawful to win the fight. We appointed committees to wait on saloon-keepers, and they asked saloon-keepers not to use United States beer. We reminded the saloon-keepers of the fact that their patrons consisted principally of workingmen, and that it was the desire of the workingmen that they should not have scab beer there, and it would be a favor to labor to dispense with that beer and take union beer. Some of the saloon-keepers refused, and we got out circulars against them, and appointed men to stand on the streets and distribute the circulars, and persuade customers not to go into the saloons. We stationed guards around all the saloons we could, and tried to keep customers away by every lawful device." After eleven months of systematically enforced boycott, the brewery surrendered and unionized.[139]

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[137] The account of this boycott is taken from the minutes of the Federated Trades Council published in the *Coast Seamen's Journal* and the *Examiner*, June, 1890, to January, 1892.

[138] *Fifth Biennial Report, Bureau of Labor Statistics*, p. 161.

The new strength of the more perfectly organized trade-unionism of this period is not only evident in the effectiveness of the boycott, but also in the support furnished to strikers. The ironmoulders' strike in 1890-1891, which was one of the most remarkable contests in the history of the California labor movement, is a good example of this ability of the labor organizations to collect the innumerable small contributions of large bodies of workingmen for the support of a strike against employers who command great accumulations of capital.

We have already noticed the organization of the Iron Trades Council in 1885. This federation was soon matched by an organization of the employers known as Engineers' and Foundrymen's Association. After making inquiries in eastern foundries and finding the wages less and conditions of work more severe than in California, this association gave notice that it would no longer observe the minimum wage, apprentice regulations, and prohibition of piece-work required by the California unions. This notice was soon followed by the discharge of eleven union men from the foundry of one of the members of the association. Thereupon, the moulders in the employ of all the firms of the Foundrymen's Association struck. Between a thousand and twelve hundred men were involved in the difficulty, though there were only two hundred and seventy-five of the moulders and their apprentices.[140]

The moulders' union is said to have spent two hundred thousand dollars in this controversy.[141] A portion of this was the regular strike benefit furnished by their International, but a very large share was from the special donation of the different California trade-unions. Not only did the unions vote money from their treasuries, but there were also numerous benefit entertainments, and assessments of portions of the weekly earnings of members. For example, we find the Typographical Union donating one hundred dollars, and then agreeing to raise by assessment a weekly sum of eighty dollars. The iron workers all over the United States interested themselves in obtaining financial support, and also did all they could to prevent the enlistment of strike-breakers.

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[139] A full account of the difficulties with the breweries is given in the *Fifth Biennial Report of the Bureau of Labor Statistics*, pp. 101-166.

[140] *Examiner*, March 3, 1890. Full reports of the strike are given in the *Examiner*.

[141] *Labor Clarion*, September 4, 1908, p. 34.

The employers found the bringing in of new men a most difficult and expensive undertaking. Every opportunity was seized to board the overland trains and persuade the strike-breakers to desert or turn back. They were hurried through Sacramento on special trains, or in well-guarded coaches, and instead of entering the city by the usual route, the men were transferred at some point outside the city, to steam launches and then landed secretly. Union men smuggled themselves into the parties made up in eastern cities, and persuaded the men to desert along the way. The union pickets surrounded the shops and watched for opportunities to entice the new men to desert. During the first nine months of the strike, about two hundred of the strike-breakers were returned to their eastern homes by the union. The newcomers were penned up in the foundries, and, as the months passed they naturally became homesick and ready to accept the standing offer of the ever-present picket to supply them with return tickets. But the employers persisted in their firm refusal to yield to the demands of the union, though the strike is estimated to have cost them millions of dollars. The moulders were obliged to yield most of the points for which they had contended, and in the hard times that followed the union was practically disbanded.[142]

FIRST EMPLOYERS' ASSOCIATION.

The employers now began to realize the necessity of completer organization, and in August, 1891, their first central body was formed. The *Declaration of Principles* indicates, that as originally planned, the Board of Manufacturers and Employers of California was formed for defense rather than aggression. It was declared that the policy of the board was not dictated by a spirit of aggression, but that its members would strive to prevent friction. The right of labor to organize was fully recognized, but the need of federations of employers to check those of labor was also maintained. While asserting that they would not refuse employment to members of labor organizations, the right to select their employees freely was insisted on. They declared that the arbitrary spirit shown by the unions in the absence of effective restraining power, and the frequent strikes and boycotts were dangerous to the industries of the community.[143]

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[142] *Seventh Biennial Report, Bureau of Labor Statistics*, p. 146, reports a membership of 38-40 in this union from 1891-1896.

The employers did not succeed in maintaining this mildly defensive attitude. A "Manifesto on the Boycott"[144] which they issued shows that they were deeply irritated and disposed to attribute the decline in business which began to be felt at this time to the influence of the unions. It is quite evident that they regarded the labor leaders as dangerous agitators who should be suppressed. A few extracts will show clearly their point of view:

> "The Board of Manufacturers and Employers of California believe that the time has come when a universal and systematic effort should be made to put an end to boycotts and the pernicious interference of trade-unions with the internal affairs of trade. Unless this be done, the already suffering industries of the city will soon become so badly handicapped as to be practically out of the race in the competition of the world. . . . [A number of instances are cited where it is alleged that work has been sent East.] . . . The firms in the Manufacturers' Association employ 40,000 people and pay $100,000 per day in wages. What if these plants go east?
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> . . . .
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> "The manufacturers do not complain of wages. There is no desire to reduce them below the normal which must always remain the highest. If permitted to do business in peace the manufacturers could pay these wages and prosper. It is the element of uncertainty that kills. The labor leader seeks to control the men, and the manufacturer cannot manage his business to the best advantage. It is because the life of a business has heretofore been at the mercy of the boycott that the manufacturers have been afraid to launch into new undertakings, improve their plants, or push for new avenues of trade.
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> "The levying and agitation of a boycott is always harmful, not,

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[143] *Fifth Biennial Report, Bureau of Labor Statistics*, p. 51.

[144] *Ibid.*, p. 52-3.

perhaps, to the particular industry sought to be injured, but to the community at large. . . . It creates that uncertainty which is the death of trade. It gives a bad impression of San Francisco to intending settlers. Boycott circulars always lie. It is not too much to say that not a single truthful boycott circular has been issued since boycotting began. Their misstatements slander the city and slander the men doing business here. They are pernicious, destructive, and wholly bad. The boycott is the crying evil of our times. . . . A boycotter is, in all respects a highwayman. He is an industrial wrecker. His single and simple proposition is, 'Stand and deliver.'

". . . Agitation is the life of unionism. None know this better than labor leaders. They have a slogan: 'Agitate, educate, organize!' But 'agitate' comes first and is the most important. This activity is good for the paid walking delegate, but it is ruinous to business, and calamitous to the industrious workingman. . . .

"This condition of things should no longer be tolerated. The boycott should be stopped. . . . Watch your employees, and discharge boycotters. Patronize boycotted firms. When boycotting becomes dangerous, and boycotts help more than they harm, boycotting will cease."

STRUGGLE BETWEEN THE EMPLOYERS' ASSOCIATION AND THE SAILORS' UNION.

While the records of the Labor Council and also of individual unions have been accessible, it is always very difficult to obtain information about the employers' associations, as their proceedings are secret. In only one instance have we been able to trace from the original sources the dealings of an employers' organization of this period with the union of the men in the employ of its members. The history of the relations of the Shipowners' Association and the Coast Seamen's Union, which we have been able to follow in this way, has particular significance, because the same man who served as secretary of the Manufacturers' and Employers' Association was the secretary and chief executive officer of the Shipowners' Association. It must also be noted that the labor leaders who suffered defeat in this contest of 1893 were among the most influential of those who planned and conducted the struggle against the employers' association of 1901.[143]

The Coast Seamen's Union was organized in 1885 and increased rapidly in numbers, soon claiming three thousand members.[146] The sailors had a disastrous three months' contest with the shipowners in 1888, after which their wages were lowered from $35 to $20 per month. But the union soon regained its strength and succeeded in 1887 in raising wages to $40. In 1891 the influence of the union was strengthened by the establishment of its own shipping office. With the dull times of 1891-3 the shipowners found it difficult to maintain the union rates and re-organized their association, employing G. C. Williams[147] as secretary. The history of this second contest with the union can be best told by quoting a few extracts from the letters of Williams to his sub-agent at Seattle. It seems probable that Williams' policy while acting as secretary and executive officer for the Shipowners is but a continuation of that adopted in his similar work for the Manufacturers' and Employers' Association.

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[143] The City Front Federation, which included fourteen unions employed on the waterfront, struck in sympathy with the teamsters.

Williams says that, when he accepted the position of secretary of the Shipowners' Association, he made a careful study of the conditions on the water front, and then submitted "a broad and comprehensive plan which designed not merely to overthrow the power of the Sailors' Union, but also to purify the entire water front after that power was overthrown."[148] In his instructions to the new agent at Seattle the policy of the association is set forth quite explicitly.[149] "I wish to impress upon our agents one particular feature in regard to the policy of the Association which might easily be overlooked or misunderstood. The main object in the administration of the affairs of the Association is to save expense to the shipowner. . . . The real problem in this fight is a financial problem. If the Association can be run at a small expense to the shipowner, every vessel will soon be placed upon its register, and there will be no union because there will be no vessels for the union sailors to man. . . . The hope of the union is to make the Association so expensive that the shipowner, who thinks more of his pocket than he does of a principle, will remain with the union." In accordance with this policy of economy lawsuits of all kinds were to be avoided. The instructions read, "Never have a union agent arrested except for some offense that the State is bound to prosecute, and which does not require the employment of a special attorney to represent the Association."

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[146] This included the central union in San Francisco, branches at Eureka, Seattle, Port Townsend, San Pedro, and San Diego.

[147] This was an assumed name; it was afterwards proven that his real name was Walthew. He had become familiar with the methods of the labor movement while acting as a reporter on the *San Francisco Daily Report.*

[148] From a letter to Captain Charles Goodall.

[149] Some of these letters were published in the *Examiner* of February 11, 1894. The instructions to the new Seattle agent are found in the letter of July 29, 1893.

The agent was urged to conduct himself in such a way that the public would be impressed with his evident desire to keep the peace, yet was told that he must not hesitate to kill when it became necessary to protect the property of the Association. The letter says, "A man might be justified in shooting any number of men who board a vessel with felonious intent, while the same man would not be justified at all in indulging in a wordy quarrel in the street. A dose of cold lead has a wonderful effect in quieting disorders if it is only given in the right time and the right place. . . . When it becomes necessary to guard the property of the Association, you will not hesitate to kill."

A letter of August 25 tells the agent that it will not be possible to increase his salary as the expenses are very heavy. But some encouragement is given in the assurance that, "The battle is about won. It will not be long before the Sailors' Union will be a thing of the past."

To meet these heavy expenses all members of the Association were taxed one dollar per man per month for each sailor carried before the mast.

The Association developed its own shipping office where lists of eligible men were kept.[130] Instead of the union card, the men were furnished with grade books. The instructions read, "One rule agents must observe strictly: a sailor owning one of these books must have the first chance for a job. Great attention must be paid to these books as we depend upon this system to prevent the union from again obtaining control of the affairs of the shipping of this coast, if men ever become scarce."

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[130] On November 7 the Shipowners' Association adopted a resolution to the effect that after November 10 the crews of all vessels should be selected from names of sailors on the shipping list kept in the office of the Association. For grade-book instructions, see the letter of October 20, 1893.

As soon as the shipowners had obtained control, the reduction of wages began. In a letter of October 11, Williams writes, "Until further notice is given to agents, the Shipowners' Association will not attempt to enforce any inflexible or universal rule respecting wages. It is intended that the law of supply and demand shall regulate wages to some extent." Not only was the standard of wages lower than that enforced by the union, but it was also stated that it was not generally customary to pay overtime. Even this lower scale was not inflexible. "Captains should be allowed to say how much they will pay so far as possible," but the letter adds, "If a low rate of wages is offered, agents should permit only inferior sailors to accept it." In November the agent is instructed that he may ship deep-water sailors at as low a rate as $15 per month. A month later another cut in the wages of the coasting seamen is announced. Men who had received $40 and pay for overtime under the union rules were now paid $25, without overtime.[181]

That the Sailors' Union suffered severely from this attack is evident from the fact that in 1893 the amount of dues paid by members declined ten thousand dollars, and in 1894 there was an additional falling off of nearly eight thousand dollars. Not until 1895 did the income again equal the expenses.

RESULTS OF THE FIRST CONTEST WITH ORGANIZED EMPLOYERS.

We can best state the results of this first contest between the organized forces of labor and capital by quoting from leaders on each side of the controversy. In an address delivered on the third anniversary of the establishment of the Employers' Association, the president spoke of their unbroken record of success, saying: "It is a matter of congratulation that it is so, for, during the past year, the most serious struggle of any in our history—the struggle with the Sailors' Union—has been undergone. In this contest upon the sea the Association has acted precisely as it has acted in previous affairs upon the land. That is to say, it has simply helped the interests directly concerned to help themselves. . . . The general success of this Association can best be understood by the light of the fact that among the industries of San Francisco there remains but a single union which imposes its rules upon its trade. That union is the Typographical Union. The reason why this union still continues to dictate terms is because the employing printers have never combined to resist its demands."[152]

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[181] The shipowners demanded a 25% reduction in wages in November, 1891, a few months after the formation of the Employers' Association. (*Coast Seamen's Journal*, December 2, 1891.) The wage scales of the Ship Owners' Association are found in the letters of November 24 and December 16, 1893.

In an unpublished manuscript of Walter Macarthur, editor of the *Coast Seamen's Journal* and the last president of the old Federated Trades Council, we find this statement of the results of the controversy: "The unions were destroyed, or at least demoralized. Individual resentment succeeded combined resistance in the minds of the working class. The sense of injustice in the attitude of the Employers' Association towards the unions was shared by a large part of the public of all classes. That the unions had made mistakes was freely admitted by all, even by trade-unionists themselves; that the employers' associations had erred in their general treatment of the labor question was regarded as equally clear. Among the general public the attitude of the Employers' Association was regarded as morally indefensible. Irrespective of personal interest in one or the other party to the strife, the public felt that industrial peace had been secured at the sacrifice of those elements upon which alone harmonious and profitable relations between employer and employee can be maintained, namely, mutual respect and confidence."

It is probable that the employers could not have maintained the former standard of wages had they wished to do so, for they were confronted with a serious economic depression. It is hard to imagine any way in which they could have met the situation without a struggle with the unions, but the question arises whether they could have accomplished their purposes by combined negotiations rather than by the deliberate destruction of the unions. The contest was not settled but only postponed; for the policy adopted created feelings of resentment and injustice which were strengthened by the deprivations of the period of economic depression that followed, and prepared the San Francisco trade-unionists for a determined renewal of the conflict in 1901.

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[152] *Coast Seamen's Journal*, August 7, 1901.

THE REVIVAL OF THE SAN FRANCISCO LABOR MOVEMENT, 1897-1901.

Mindful of the many crises in which the stronger organizations of San Francisco had rendered them assistance, the Sacramento trade-unions now rallied to the aid of their discomforted colleagues.[153] Two men were sent to San Francisco to assist in reorganizing the routed forces of the Federated Trades Council. It was still possible to gather representatives from thirty-four of the forty-four[154] unions that had been members in 1891. As it was no longer possible for San Francisco to claim trade-union leadership for the whole Coast, it was felt that the former title was a misnomer, so the name of San Francisco Labor Council was adopted by this re-organized body in 1892. But during the hard times of 1893-1894 it was increasingly difficult to hold the unions together. The Labor Council steadily declined in numbers. In 1896 only eighteen unions were still faithful, and a year later the lowest point was reached, when but fifteen unions with a membership of 4,500 were represented in the Council. Sometimes not more than a dozen delegates gathered at the weekly meetings.

San Francisco now entered upon a period of unusual prosperity. Not only did the Spanish-American war, the annexation of Hawaii, and the opening of the Alaskan gold mines bring a great increase of prosperity and business, but there was also a general revival of the industries of the state and a great influx of capital seeking investment. The new prosperity was particularly noticeable in the increased activity in building. The hundreds of idle workers now found employment. The savings banks again showed a surplus of deposits over withdrawals.[155]

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[153] *Labor Clarion*, August 7, 1903; September 4, 1908.

[154] My statistics of the Labor Council are taken from an unpublished manuscript by Ed. Rosenberg, who was secretary of the Labor Council and had access to the records at the time he wrote it.

The revival of prosperity brought new life to the trade-unions. At first the increase was gradual,[156] but in 1899 to 1901 there was a period of unprecedented activity. The Labor Commissioner writes of this period: "We can but note the remarkable increase in organization of labor manifest since the commencement of the year 1899. While prior to said time not more than eight or ten organizations have come into existence in any one year, and while the rule has been not more than four or five, we find the record for 1899 to have suddenly increased to twenty-five, while ten new organizations appear during the first half of the present year, 1900."[157]

Not only were many new groups of workers organized, but the unions were affiliated with central bodies to a greater extent than ever before. While less than one-half of the trade-unions of the state were represented in central bodies in 1900, practically all the unions had established such local affiliations by 1902. About one-fourth of this increase in the number of central bodies was due to the tendency to segregate kindred trades.[158]

The building trades were the most important of these groups of related crafts. They were now organized in separate councils for the first time. On February 6, 1896, five of the San Francisco building trades having a membership of about two hundred came together and formed the Building Trades Council. Several previous attempts had been made to federate this group of unions. We have seen that at the time when the Federated Trades Council was organized there was a general tendency to unite related trades in sub-federations. An organization of the building trades was formed, but does not seem to have been very active until 1890. At this time these trades, which were affiliated with the Federated Trades Council, were selected as the ones best qualified to demand the eight-hour day.[159] This shorter work-day which went into effect on May 1, 1890, was obtained by the San Francisco unions with very little difficulty. At the time of its enforcement a joint executive committee representing all the building trades was formed. While this was not permanent, it may be regarded as a predecessor of the present Building Trades Council.

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[155] During 1894, $97,496,712 were deposited and $104,155,474 withdrawn. In 1899 the amount deposited exceeded the amount withdrawn by $705,411. (Page, *Political Science Quarterly*, Vol. 17, p. 665, December, 1902.)

[156] The statistics of the San Francisco Labor Council are: July, 1897, 15 unions; 1898, 18; 1899, 21; 1900, 34; July, 1901, 90; October, 1901, 98.

[157] *Ninth Biennial Report, Bureau of Labor Statistics*, p. 114.

[158] *Ibid.*, pp. 117-8. *Tenth Biennial Report, Bureau of Labor Statistics*, p. 78.

The great activity in building in San Francisco at this time brought increased numbers and prosperity to the new Council. By 1901 it was composed of one hundred and fifty delegates, who represented thirty-six unions with a membership of fifteen thousand.[160] It was able to announce that it represented every building trade in the city,[161] and aimed to control the building industry from the foundation to the roof. Similar Building Trades Councils were organized in other important cities of the state, largely through the efforts of the San Francisco Council.[162] In 1902 these Councils were united in the State Building Trades Council.

The reports of the State Labor Bureau show that during this period there was a great increase in trade-union membership in all the industrial centers of the state. Two hundred and seventeen unions with an estimated membership of 37,500 were reported in 1900. They were distributed as follows: 90, or 41 per cent. in San Francisco; 23, or 10 per cent. in Oakland; 26, or 12 per cent. in Los Angeles; 20, or 9 per cent. in Sacramento. In 1902 the number of unions had doubled. Of the 495 organizations with an estimated membership of 67,500, 162 were found in San Francisco, 36 in Oakland, 68 in Los Angeles, 45 in Sacramento. About 66 per cent. of the trade-union membership was in San Francisco.[163]

The great increase in San Francisco was due to the fact that among the newly organized unions were many trades employing large groups of workers. The most important of these new unions were those of the butchers, cooks and waiters, stablemen, street-railway employees, retail clerks, laundry workers, teamsters, barbers, hodcarriers, tanners, and laborers.[164]

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[159] This eight-hour movement was national in scope. Everywhere the building trades were selected as the ones to make the demand.

[160] *Organized Labor*, August 31, 1901.

[161] Several unions maintained membership in both the Building Trades and the Labor Council until 1902.

[162] Alameda County Building Trades Council organized in 1899; Sacramento, San Jose, Stockton, Fresno, Bakersfield, in 1900. (*Organized Labor*, August 31, 1901; *Ibid.*, September 3, 1904.)

[163] *Ninth Biennial Report, Bureau of Labor Statistics*, p. 92; *Tenth Biennial Report, Bureau of Labor Statistics*, pp. 77-79.

The representatives of the less democratic building trades were inclined to doubt the wisdom of this rapid organization of unskilled trades. Their official paper sounded a note of warning to the energetic leaders of the rival central body.[165] Three months later the editor complained that this warning had not been heeded. On the contrary, he says, "The professional organizer doubled his efforts and the Labor Council increased its organizing committee. Unions were formed—that is, very few of them were trade-unions, but there were many, many unions of divers occupations and callings. Charters were sent for and hung in the meeting halls until they covered the four walls. . . . The Labor Council gathered under its wings a most varied collection of eggs and hatched some curious ducklings and labeled them trade-unions. The one motto of all seemed to be: 'Organize, demand, strike!' The old staunch trade-unions tried to stem the current by passing a law to the effect that no new union should go on strike before it had been organized and a member of the Council for at least six months. This sensible provision, however, failed to pass."[166]

This organization of new groups of workers was crowned and completed by the formation of the State Federation of Labor in January, 1901. Delegates from eight cities were present at the first meeting.[167] It has continued to hold annual sessions for the discussion of questions of general interest to the working people of the state, and has been particularly useful as a means of securing concerted efforts for the promotion of labor legislation.

To sum up the conditions reviewed, we find that between 1897 and 1901 there was not only a complete revival of the labor organizations, but that this wave of unionism rose higher than ever before; new trades were organized, the central councils gained a completer control over the labor conditions of the chief industrial centers of the state, and these in turn were provided with the means for greater coöperation by the formation of permanent State Federations. We will now turn our attention to the use made of this new strength gained by perfected organization.

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[164] *Tenth Biennial Report, Bureau of Labor Statistics*, p. 78.

[165] *Organized Labor*, March 2, 1901.

[166] *Ibid.*, June 22, 1901.

[167] *Ibid.*, January 12, 1901.

THE SECOND GREAT STRUGGLE OF ORGANIZED CAPITAL AND LABOR, 1901.

The object of this great revival of trade-unionism soon became apparent. The working people were determined to gain what they considered a fair share of the great prosperity which characterized this period. It is interesting to find that at first both the San Francisco central bodies used their new strength to obtain better conditions of work rather than increase of wages. The Building Trades Council undertook to win the eight-hour day for the mill men. This was a vigorously contested fight lasting almost seven months. Finally the trade-unions established a planing-mill of their own and at once proved their ability to run it in a business-like way. The mill owners then decided that it would be more profitable to come to terms with the Council. The new mill, which was the second largest in the city, was admitted to their Association, and the Council agreed that the members of its affiliated unions should refuse to handle lumber prepared in a mill requiring more than eight hours for a day's work. As the mills outside of San Francisco had the nine and ten-hour day, this meant a monopoly of the mill work for the members of the Association. Other groups of workers in the Building Trades Council also obtained the eight-hour day or substantial increases of wages.[168]

Early in 1901 the unions in the Labor Council also began demanding better conditions of work. The editor of the *Coast Seamen's Journal*, who was a prominent member of the Council, states clearly its policy at this time. He says: "In the early part of the present year [1901] the growth of organization among the workers of the city had proceeded sufficiently to justify a movement for the establishment of better conditions in many trades. Consequently a number of organizations in the Labor Council, acting with the advice and endorsement of that body, submitted proposals to the employers in the different trades, looking mainly to the reduction of hours and the improvement of working rules. In some instances an increase of wages was asked, but these were comparatively few. As a result many unions gained substantial advantages." He then enumerates twenty-one organizations that have received benefits of this kind.[169]

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[168] *Organized Labor*, August 31, 1901.

In this period prior to the organization of the Employers' Association, the writer claims that there was a general disposition on the part of the employers to grant the demands of their workmen. He declares: "With few exceptions, the improvements asked by the trade-unions were willingly conceded by the employers, who in many instances openly admitted that such improvements would redound to their advantage, provided the trade-unions were sufficiently well organized to insure the acquiescence of all employers in a given trade. The trade-unions met the requirement, thus for the time establishing peaceful and profitable conditions for all."[170]

But this, from the workingmen's point of view, happy state of affairs did not long continue. In April the papers announced the formation of another Employers' Association. After completing its work, the Association of ten years before had disbanded, so that there was no organized opposition to the rapid revival of trade-unionism. It was evident from the outset that the new association was preparing for a great contest. As the profoundest secrecy was maintained about all of its business, it is difficult to obtain reliable information about its policy or actions. But it was said that each of the fifty men who met to form the association pledged $1,000 for its work. This original sum was reported to have been increased by subsequent donations, so that $250,000 was raised for the campaign. It was also stated that the members were under heavy bonds to stay with the association until its work was accomplished.[171]

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[169] *Coast Seamen's Journal*, August 7, 1901, p. 1.

[170] *Ibid.*, p. 2.

[171] *Los Angeles Times*, September 2, 1901. The author quotes from an unpublished manuscript by Charles B. Ferrier.

Professor T. W. Page, in his study of the San Francisco labor movement, calls attention to the provisions in the by-laws which transferred the management of all contests with the unions from the individual employer or group of employers immediately concerned to the association. A portion of Article VIII reads: ". . . All differences and disputes between members of the Association and any labor union, and any and all demands of any labor union against any member of this Association shall be immediately referred to the Executive Committee or to the Secretary of the Association, and no settlement or adjustment of such differences, disputes, or demands, shall be made save by and with the consent of the Executive Committee and in accordance with its instructions. . . ."[172]

The influence of the new organization began to be felt immediately. On April 1, 1901, the metal polishers had struck for an eight-hour day with the same pay as for their former ten-hour day. A number of the smaller shops professed a willingness to grant the demands, but declared that they were threatened with a refusal of supplies if they granted the demands of the strikers. In July the union was forced to call the strike off without gaining the concession demanded.

The questions at issue and the tactics to be adopted were clearly revealed in the next controversy, that of the cooks and waiters. This was one of the newly organized unions in a trade where there were many members who worked long hours for seven days of the week. It was proposed to unionize all the numerous eating places in the city, and on May 1 an agreement was presented to their proprietors for signature, its chief provisions being:

"(1) The union agrees to furnish its union house card to the employer free of charge to him, and make no discrimination between the employer and other firms, persons or corporations, who may enter into an agreement with the union for the use of the house card, and to use all reasonable effort to advertise the union house card. . . .

"(2) In consideration of the foregoing valuable privilege, the employer agrees to employ none but members of the Cooks and Waiters' Alliance Local No. 30 in good standing and who carry the regular working card of the organization.

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[172] *Political Science Quarterly*. Vol. 17, pp. 668-9, December, 1902.

"(3) It is mutually agreed that the union will not cause or sanction any strike, and the employer will not lock out his employees while this agreement is in force.

"(4) The employer agrees that six days shall constitute a week's work for the employees.

"(5) The employer agrees that the maximum length of a working day shall be ten hours for the waiters and twelve hours for the cooks and kitchen subordinates."

The remaining articles provide for a scale of wages and the method of settling differences. It will be seen that this agreement involved not merely concessions in the matters of hours and wages, but also a complete recognition of the union. In this, as in subsequent contests of this period, the employers declared that questions of hours and wages could be adjusted, but the recognition of the union was positively and persistently refused, on the ground that it would mean the loss of control of their business.

About two thousand men and women were involved in the strike to enforce these demands. Three hundred of the smaller eating places soon displayed the union card. These restaurants depended on the working people for their patronage, and were often managed by the proprietor and his family with but little extra help. The larger places formed a Restaurant Keepers' Association, and, with the assistance of the Employers' Association, prepared to resist the demands.

It is difficult to straighten out the tangle of sympathetic strikes and pressure from employers of this preliminary skirmish of the two great contending forces. The unions at once commenced a vigorous boycott of the non-union restaurants, while the employers' sympathizers refused supplies of bread, meat, oysters, and groceries to the places displaying the union card. To remedy this situation, the employees of certain bakers were called out, and the retail butchers were coerced by a threat of their journeymen to strike. The wholesale meat dealers then brought pressure to bear on the retail men by refusing to sell to those displaying the union card.[173] The removal of the union card of the journeymen butchers resulted in the strike of 1,500 men. But theirs was a new union, undisciplined and without strike funds, so the men held out only a few days. The meat dealers then refused to furnish meat to restaurants displaying the union card, and it soon came down in all but a few small places. In this first encounter the advantages were with the employers.

While this controversy was in progress, there were also difficulties with other trades. The carriage makers made demands similar to those of the cooks and waiters. The employers declared their willingness to grant the hours and wages demanded, but refused to recognize the unions. The labor men claimed that there was the same coercion of those willing to concede all the demands of the union.[174]

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[173] Professor Page gives a slightly different version of this difficulty: "Some months earlier the journeymen butchers had drawn up a scale of wages and hours, and the retail meat dealers agreed to adopt it on condition that the journeymen would not require them to display in their windows the union card. To this condition the journeymen acceded. But some of the retailers, hoping to increase their custom among the working people, voluntarily displayed the card in token that their shops were 'unionized'; whereupon it is said that 50,000 facsimiles of the card were distributed broadcast by the journeymen, and people were advised to help the laborers by purchasing only where the original was displayed. Whether this accusation be true or not, at any rate trade was diverted to the 'unionized' shops, and the proprietors of the others lost custom. To suppress this 'unfair' competition the aggrieved merchants appealed to the wholesale butchers for assistance. The wholesalers, hearkening to their petition, ordered, under penalty of a refusal of supplies, that all cards should be taken down, whereupon the journeymen retorted by ordering all the shops to display them." (*Political Science Quarterly*, Vol. 17, pp. 673-4, December, 1902.)

[174] The secretary of the Labor Council, whose position required him to take part in the efforts to settle controversies, gives the following account of the part played by the Employers' Association in these difficulties: "While the fight on this field was going on, strikes in other trades were likewise carried on. On May 1 a conference was held between a committee of the Carriage Makers' Association and committees representing the Carriage Blacksmiths, Woodworkers and Painters. It ended in the employers' committee agreeing to employ none but union men, the granting of the reduction of hours from ten to nine, and a minimum wage scale. But a few days later to the meeting of the Carriage Makers' Association came the secretary of the Employers' Association and bluntly told them that if they entered into such an agreement they would be refused supplies, especially steel, and orders for carriages would be sent East. They were told that certain firms here were agents for the steel trust, and that no supplies could even be got East. On the other hand, if they would fight the union demands and affiliate with the Employers' Association, they would get support financially and otherwise, and that no supplies would be sold to any carriage manufacturer who could not produce the mem-

Over four thousand ironworkers also struck for the nine-hour day. This strike was not immediately connected with the controversy between the two organized forces in San Francisco, but was part of a general movement for a shorter work-day for which these trades had been preparing for some time. These unions were among the oldest in the city, and could be depended on for a determined fight. In this strike the question of supplies for small shops willing to yield to the unions also arose.[173]

The subsequent events of the struggle were the product not merely of the conditions of 1901, but also of the contest of ten years before. The editor of the *Coast Seamen's Journal*, who was prominent in the councils of labor at both periods, sums up the conditions in this way: "In only one particular did the situation of 1900 differ from that of 1890, namely, in the knowledge of the events that had transpired between these dates. That knowledge led to suspicion and distrust concerning the attitude of the employers and justified measures which would otherwise have been deemed unnecessary, and, indeed, have been impossible of execution. The men who, throughout the succession of strikes which began in 1901, were vested with the chief responsibility for the conduct of the labor force had been among those most prominently identified with the earlier epidemic of labor troubles. Naturally, these men were disposed to advise the adoption of such measures as they deemed necessary

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bership card of the Carriage Makers' Association. A strike of 500 carriage makers on May 8 was the result. A few small carriage shops gave in to the union demands. They were refused supplies, as had been threatened. To break through the supply blockade, the Brotherhood of Teamsters, membership about 1,800, in turn gave notice that its members would refuse to haul for those houses that refused supplies to union carriage manufacturers. Negotiations followed, and on May 22 the carriage workers were granted their demands, the unions waiving the signing of agreements."

[173] In his accunt of the ironworkers strike, he says: "Here, too, the supply question came up. In June over thirty-two small shops had given in, but the supply houses close around them and soon but four shops managed to run on the nine-hour basis." These extracts are from an unpublished manuscript written by Ed Rosenberg, the Secretary of the Labor Council, dated October 29, 1901. The attorney of the Employers' Association at one time denied that it had caused the refusal of supplies to employers willing to grant the demands of the unions. It is evident throughout the controversy that the trade-unionists were thoroughly convinced that this method of coercion had been repeatedly resorted to, and this belief had much influence in arousing them to the extreme measures adopted to combat the employers.

to prevent a repetition of the defeats that occurred in the previous period. Thus, while the unions, generally speaking, lacked the experience that might have obviated many errors, both in their demands and in their tactics, the defensive features of the movement, as conducted by the older men, were based upon a justifiable presumption of their opponents' object. This difference in the particulars of the situation in 1900, as compared with that of 1890, is important as an explanation of much that transpired in connection with the strikes and the political events incidental to the latter.''[176]

In other words, the men who had been through the previous conflict were unwilling to permit the Employers' Association to pursue a policy of "divide and conquer." It was felt that it would be better to bring on a general engagement before the forces of labor were demoralized by the continued defeat of the weaker unions. As Professor Page remarks, "The insecurity of the situation, the vague feeling of uneasiness, the nervous tension of men facing a dubious prospect, were more intolerable and exasperating than open hostilities could be. Both sides, therefore, were determined to precipitate a struggle as soon as it could be done without sacrificing any strategic advantage. Under these circumstances the opportunity could not long be delayed."

TEAMSTERS' STRIKE OF 1901.

The strike of the teamsters in July afforded an unusually favorable opportunity for this great trial of strength. The immediate cause of the strike was trivial in comparison with the real issues at stake. The Epworth League was to meet in San Francisco, and a non-union firm had obtained the contract to deliver the baggage. But the manager of this firm had a brother who was a member of the Draymen's Association, and who sometimes assisted the delivery company when work became too heavy for its teams. The Brotherhood of Teamsters and the draymen had entered into an agreement by which the draymen were pledged to employ only union men and to handle no goods for firms who were not members of the Association. When the teamsters employed by the union drayage company were ordered to assist in hauling the baggage which the non-union firm had contracted to deliver, they refused on the ground that to do so would be a violation of their agreement. A lockout of the teamsters so refusing quickly followed, and, as the Brotherhood persisted in its refusal to haul for non-union firms, or for firms whose men were locked out, it was only a matter of a few days before a large percentage of the members had left their work. The three hundred remaining members were then ordered out by the executive committee of the union.

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[176] From an unpublished manuscript by Walter Macarthur.

The Employers' Association now made its first public appearance, announcing through its attorney that it approved of the course of the draymen and proposed to assist them in the controversy. Here again the labor men claimed that the draymen did not willingly resign the control of the situation to the Employers' Association. Their account asserts that when the Draymen's Association met, it at first decided by an overwhelming majority that the Brotherhood of Teamsters had a right to refuse the work of the delivery company. It is claimed that members of the Employers' Association then filed articles of incorporation of a new draying company, and confronted the draymen with a probable loss of business,[177] and so induced them to fall in line with the policy of the Association.

Of all the unions represented in the Labor Council, the teamsters had the greatest power of working injury to the business of the city. Many of the docks were without railway facilities, and but few factories and wholesalers could be reached by spur tracks. Had the unions been able to control the outside supply of labor as they did that in the city, this strike might have accomplished their purpose. The business of the city was at first seriously crippled, but the Employers' Association held everyone firmly to the policy of refusal of recognition of the unions. Extra pay and a bonus for continued service during the trouble were guaranteed, and an employment bureau for furnishing help for the draymen established. Army teamsters recently returned from the Philippines, and help from the country were soon procured and quickly trained to do the work of the teamsters.

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[177] From an unpublished manuscript by Ed. Rosenberg, secretary of the Labor Council.

The labor men throughout the city looked upon this contest as the decisive one; they must win now or sacrifice all chance of future gains through their newly-perfected organizations. Some hot-heads in the Council were in favor of a general strike, but more conservative advice prevailed. It was decided that only the unions of the City Front Federation, in which the Brotherhood of Teamsters were represented, should be called on for help. Among the fourteen unions composing this federation were some of the oldest, best disciplined, and richest in the city. Their leaders were not slow in reminding the members of the results of the contest of 1893-4, and no urging was necessary to secure an enthusiastic endorsement of a sympathetic strike by every union in the federation. On July 30th the sailors, longshoremen, marine firemen, porters, packers, warehousemen, pile-drivers, hoisting engineers, ship and steamboat joiners, steam and hot-water fitters, marine cooks and stewards, and coal-cart teamsters, in all about 13,000 men, left their work. To these were added the boxmakers and sawyers, and sand, rock, and gravel teamsters in San Francisco, the dock laborers of Oakland, Redwood City, and Benicia, and the warehousemen handling the grain crop at Crockett and Port Costa.

The business not only of San Francisco but of the entire state was at a standstill. Many innocent parties saw themselves confronted with financial ruin. The situation was particularly hard for the fruit growers and the farmers. The supply of boxes and tin cans necessary for handling the crops was cut off, and the fruit could not be marketed or sent to the large canneries of San Francisco and Oakland. The warehouses at Port Costa were soon congested with grain, so that the farmers feared that they would be unable to get their crops under shelter before the rains.

Throughout the struggle many earnest efforts were made to effect a reconciliation of the contending forces, or at least secure a conference between the leaders. Civic bodies of all kinds, groups of business men, the clergy, the supervisors, the Mayor, and other prominent individuals all made repeated attempts to bring this disastrous warfare to an end. To all of these advances the representatives of the labor interests responded heartily, but from the first to the last it was impossible to meet the members or the executive committee of the Employers' Association. Professor Page concludes his account of this feature of the contest thus: "Eventually the Employers' Association absolutely declined to consider any proposition coming from disinterested parties, and through its attorney requested that no further negotiations or mediations be offered by anyone. By such severity it undoubtedly injured its cause in the eyes of the public. It was widely believed that if a conference could be arranged between the executive committee and the labor leaders a settlement would not be difficult. Its stern reserve gave color to the complaints of the workmen that the employers were intolerant, arrogant, and tyrannical."[178]

It seems probable that the fear of the boycott had much to do with this persistent refusal. The employers were determined to make no concessions, and a conference would necessarily have revealed the membership of the Association. The labor men were making great efforts to discover the names of persons or firms in the Association, and in July the boycott had been declared against nine members. The secretary of the Council testifies that several hundred thousand boycott circulars were sent out during each week of the strike, and that the working people of neighboring states kept up the "most thorough boycott ever prosecuted." It has also been suggested that men with political ambitions could not have been induced to join any but a secret organization, and that this policy would secure a more harmonious and united support of the diverse interests represented.[179]

In response to the efforts of the Mayor and a committee of the supervisors, two statements were issued through their attorney, throwing some light on the point of view of this profoundly secret association. They sent the following response to the Mayor's request for the terms on which they would be willing to settle the strike:[180]

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[178] Page, *Political Science Quarterly*, Vol. 17, p. 682, December, 1902.

[179] *Ibid.*, p. 669.

[180] For the account of these efforts of the Mayor, see the San Francisco daily papers, July 30 to August 6, 1901.

"The Employers' Association is willing to recommend to the members of the Draymen's Association that they fill all present and future vacant positions in their service by such persons as may apply for work, irrespective of whether the applicant belongs to a union or not, upon the following terms:

"I. That the employee shall obey all lawful orders of the employer.

"II. That the employee will not, directly or indirectly, attempt to compel a fellow-employee, against his will to join a labor union, nor to compel his employer to employ none but union men.

"III. That the employee will not engage in or support any sympathetic strike or boycott."

The committee of the Board of Supervisors appointed by the Mayor to endeavor to bring about a settlement of the strike wrote to the Association declaring that they merely asked for a conference, and expressing their conviction that public opinion was crystallizing against the Association because of the unwillingness to discuss the terms of settlement. The reply stated that, while they were willing to treat with the strikers individually at any time, any meeting with the representatives of the unions would mean the surrender of the principles at stake. This principle, the right of the employer to control his business, might be surrendered, but could not be compromised. A conference would but prolong the contest by inspiring hopes of a settlement on the terms of the strikers.

These statements show clearly the attack on the united activities of the labor organizations; the boycott, the sympathetic strike, the efforts to enlist new members, must be relinquished, and from the first to the last the employers refused to recognize in any way whatever the authority of representatives of large groups of workers. As the labor men maintained throughout the contest, the issue at stake in support of which 20,000 men had abandoned their work was "the right to organize."

The trade-unionists would under no circumstances forego their legal right to strike, nor were they willing to relinquish that equally powerful weapon, the boycott, or to cease their efforts to enlist fellow-workmen in the unions. Their proposed agreement required that the members of the Employers' Association cease discrimination against members of the unions, and employers who were willing to employ union men only. The men who had quit work were to be restored to their positions, and were to obey all orders concerning the work to be performed. In case of difficulties, the strike or lockout was not to be resorted to until an effort at arbitration had failed.[161]

For our purposes it will hardly be profitable to attempt an account of the events of this three months' contest between the great opposing organizations of capital and labor. The employers continued to make increasingly successful efforts to enlist an adequate force to take the places of the strikers, while the pickets of the labor unions lost no opportunities to turn away prospective workers before they could reach the city, or to persuade those already engaged to desert. As the strain became greater with the prospects of failure, the union leaders found it more and more difficult to restrain violence, particularly as among the large number of special police there were many irresponsible men who frequently provoked contests.

On October 2 Governor Gage suddenly appeared in San Francisco, saying that he had been requested by the parties most concerned to attempt a settlement of the difficulty. He sent for the officers of the Draymen's Association and of the Brotherhood of Teamsters, and after a conference, it was announced that terms had been agreed upon and the strike declared off. The next day the men went quietly back to their work. The terms were not made public, but since the teamsters returned to work with such of the non-union employees as cared to retain their places, it is evident that they did not attain the immediate object of the strike. But we have seen that the real motive of the struggle was the desire to check what was believed to be a systematic campaign against the unions. This prolonged contest, with its disastrous effect on the business of the state, and the subsequent political successes, made it evident that the overwhelming victories of 1891-4 were no longer possible. To quote from Macarthur, who was a member of the executive committee of the City Front Federation: "In letter the agreement provided merely for a mutual cessation of hostilities, but in spirit it was understood to convey a renunciation by the Employers' Association of any design to prosecute an attack upon the unions with the object of disrupting them. The City Front Federation had vindicated the 'right to organize', and its members returned to work in a spirit which, if not that of complete victory, was one of profound confidence of future peace between employer and employe. This confidence has since proved to be fairly well justified."

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[161] *Coast Seamen's Journal*, July 31, August 7, 1901.

Ray Stannard Baker, who made an investigation of the labor situation in San Francisco a few months later, wrote of the results: "On paper the employers were successful in their main contentions; they avoided 'recognizing' the union; their workmen came back without reference to their affiliation with any labor organization; the right of free contract was established. But it was a barren victory. Practically the union won the day. There is a kind of fighting which makes the enemy stronger: that was the method of the San Francisco Employers' Association. It was an example of how *not* to combat unionism."[182]

THE LABOR UNIONS IN POLITICS.

The municipal election of 1901 came a few weeks after the settlement of the strike. As in 1878, the working people had been thoroughly aroused and united; as at that time class issues had been strongly emphasized. Not only was there the same stimulation of class consciousness, but there was also a similar bitter dissatisfaction with the city government. Throughout the contest the strikers complained that the municipal authorities were fighting on the side of the employers.

Although the labor leaders made sincere and earnest efforts to check disorder, there can be no question that there was much violence, particularly during the latter stages of the strike. The policy of the city authorities in dealing with this disorder was bitterly criticised by the laboring men, and that a large number of disinterested citizens sympathized with their point of view seems evident from the results of the election, which furnished the first opportunity for an expression of the overwrought public feelings. In brief, the acts complained of were:

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[182] *McClure's Magazine*, Vol. 22, p. 368, February, 1904.

First—The placing of policemen on the drays with the non-union drivers. It was claimed that the business of these teamsters was all in the center of the city, and that policemen stationed in the streets could have given ample protection. The strikers declared that the policemen directed the non-union drivers who were unacquainted with the city, and assisted them in various ways with their work.

Second—The rough handling of the men on the waterfront caused much indignation. The leaders of these unions had determined to do all in their power to prevent strike-breakers coming into the city, and at the same time guard against violence. They organized a large and effective force of pickets, who were on the lookout for new men who might be persuaded to give up their plans of seeking work in the city, and were at the same time charged with the duty of preventing disorderly conduct on the part of their fellow trade-unionists. It was claimed that these men were roughly handled by the police without cause, and that many arrests were made of men whose only offense was their membership in the unions, merely for the purpose of clearing the docks.

The third cause of complaint was the swearing in of a large number of special police who were paid by the employers. Many persons not engaged in the controversy questioned the wisdom of this policy. The resolutions of the Federation of Mission Improvement Clubs set forth the point of view of these critics:

> "Resolved, That the action taken by the Police Commission in appointing a large number of irresponsible and inexperienced men to exercise the duties appertaining to the enforcement of police regulations is in our judgment injudicious and a menace to the peace, security, and order which should be maintained by the constituted authorities. We desire to direct attention to the fact that men employed as police officers paid by private contribution will serve the contributor and cannot perform police duty impartially. In our opinion the Police Commission should draw upon the urgent necessity fund, when necessary to employ such additional policemen, who should be solely under the control of the constituted authorities, and thereby be required to perform impartially this high and important duty."[183]

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[183] San Francisco daily papers, August 16, 1901.

The Union Labor party was not officially recognized by the labor organizations, and at first was even discouraged by some of the men who had been most prominent in the strike. It was partly a spontaneous expression of this dissatisfaction with the city government, and partly the product of the insight of shrewd politicians, who seized the opportunity to utilize the social forces generated by the previous controversy. The strike had been an effort to check further aggression by a demonstration of power. Its lack of entire success was believed to be due to the fact that the influence of the city authorities had been used on the side of capital. The coming election furnished another opportunity to show the strength of the labor movement and, at the same time, to weaken the employers by obtaining control of this powerful ally.

This was the second election under the new charter which to an unusual degree centers power in the Mayor. At the election immediately following the strike the new party captured this important office, their candidate receiving 21,774 of the 53,746 votes cast. They also elected three of the eighteen supervisors.

The older parties at once realized the strength of this new influence in politics, and in subsequent elections combinations were made which resulted in placing a number of these joint candidates in office. In the state election of 1902 the Union Labor party nominated a judicial, congressional, and state legislative ticket.[184] The influence of the party was confined to San Francisco, no attempt being made to elect a general state ticket. The party elected one state senator, seven assemblymen, the San Francisco Superintendent of Schools, and two Congressmen. With the exception of one assemblyman, all of the successful candidates carried Democratic endorsements, and ran in districts where the influence of this party was strong.

In the elections of 1903-4 it was clear that the new party was losing influence; the class issues raised in 1901 were being forgotten, and men were returning to their former allegiance to the older parties. It is true that Mayor Schmitz was reëlected by a vote of 26,050 in a total of 59,767, thus showing a gain in strength. One supervisor, who owed his success to the support of the saloons, and a few candidates receiving endorsements of the older parties, were also elected to municipal offices. But in the state elections there was a decided loss of strength. One Superior Judge who ran on both the Democratic and Union Labor tickets, three assemblymen and three senators carrying the Republican endorsement were successful. The congressional representation secured two years before was also lost.

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[184] The author is indebted to Walter Macarthur, editor of the *Coast Seamen's Journal*, for much of the material used in the account of the political activities of the labor unions.

But in 1905 there was a sudden accession of strength which gave the Union Labor party complete control of the San Francisco municipal government. An analysis of the causes of this success would take us far from the history of the labor movement, and necessitate an examination of the manifold sources of corruption in the government of American cities. The Union Labor party had been managed from the outset by a very able and utterly corrupt boss. The use of the great power of the Mayor's office for four years had made possible the development of a powerful political machine. From the outset the administration of the Union Labor Mayor had been subjected to hostile criticism. During his second term there was much circumstantial evidence in support of the charges of graft, but a thorough Grand Jury investigation failed to reveal any ground for the indictment of the leaders of the party, so it was easy to convince its many honest supporters that Schmitz was the victim of class prejudice and malicious persecution.

The Union Labor ticket was opposed by a combined ticket of Democrats and Republicans. While this fusion party made graft the chief issue of the campaign, and was nominally a movement of reform, it soon became evident that it was largely an effort of politicians to regain their power, and it failed to arouse any enthusiastic belief in its ability or sincerity. The influence of the party was also weakened by the fact that the Citizens' Alliance, an organization which was regarded as the successor of the Employers' Association, lost no opportunity to make known its support. By emphasizing this connection the managers of the Union Labor party were able to appeal to all the passions aroused in the previous struggle.

As Schmitz had lacked four to five thousand votes of receiving a majority of the total votes cast in the previous election, and as the Socialists, who were the third party, had only a small following, the fusion party felt confident of success. But when the returns came in, it was found that the entire Union Labor ticket had been elected, and that Mayor Schmitz had received more votes than any other person on the ticket, with the exception of one police judge who had been nominated by both parties. The Union Labor party was now in complete control of the municipal government.

But this final demonstration of its power to command the votes of the people was followed by overwhelming revelations of the moral unfitness of its members to discharge the duties entrusted to them. The indictment of Mayor Schmitz and of the political boss of the party, and the compulsory resignation of the grafting supervisors was the humiliating outcome of this first attempt to place in high offices of public trust men who nominally, if not actually, represented the working people.

RECENT TENDENCIES OF SAN FRANCISCO TRADE-UNIONISM.

While the political successes of the trade-unions have brought but few direct benefits, there have been indirect gains. The older political parties are now showing a disposition to give the labor men a fair representation on their tickets. With increasing opportunities for practical experience in the duties of public life there will be greater incentives for intelligent interest in and preparation for service of this kind. As there is much natural ability among the San Francisco labor leaders, we may hope that in time men will be developed whose knowledge of public affairs will be comparable to that of some of the great English labor leaders.

All demonstrations of political power have a reflex influence on legislation for the protection of the wageworkers. During this period, the labor organizations have secured many useful laws. It has become a regular custom for the San Francisco Labor Council to maintain at Sacramento during the entire session of the legislature a representative who makes it his business to promote the bills sent up by the labor organizations, and to notify the Council promptly when any measures likely to prove injurious to the interests of the working people is introduced.

The demonstration of their political power has given the labor organizations greater confidence in themselves. The Citizen's Alliance has never excited the alarm or prompted the more aggressive actions that were felt to be necessary in dealing with the Employers' Association. A consciousness of power often tends to greater conservatism and tolerance.

There is no better evidence of the real gains in stability and permanence of the San Francisco labor movement than the fact that, for the first time in its history, it has been able to pass through a period of extreme economic depression without serious losses. During the recent financial crises there have been many idle men, but the unions have held together, and have relinquished but few of the many advantages gained during the previous period of extreme prosperity.

The general history of trade-unionism in San Francisco, as in other industrial centers, shows certain well-marked periods of development. After many unsuccessful attempts, the men learn to subordinate their individual differences sufficiently to make possible continuous united activity. When power is obtained through the ability to maintain effective organization, the inevitable struggle in which the employers attempt to break down the union, or refuse the right of negotiation through its representatives, is sure to follow. The last stage of development is that in which the right to organize is fully recognized, in which hard-fought battles have taught mutual respect, so that both parties recognize the greater economy and wisdom of the concessions necessary for joint agreements. The older unions in England and to an increasing extent in this country have attained to this last stage of development.

While it is probable that San Francisco must witness many renewals of the wasteful industrial conflicts of the past, there are hopeful signs of the transition to this third period in which the difficulties are settled by joint agreement. A very interesting example of this new method of gaining advantages is afforded by the recent agreement by which the iron trades will at last attain the eight-hour day. If one may judge by the frequent allusions to this and other agreements in the meetings of the Labor Council, a strong public sentiment in favor of the scrupulous observance of the terms of such agreements is being developed.

However reluctant to do so, the employers have come to a realization of the fact that the unions are permanent factors in the industrial life of the community, and that negotiation and arbitration are more economical than a fruitless attempt at suppression. We are beginning to realize that our social inheritance is as positive and unescapable as our physical. We have seen that the San Francisco labor movement is not of recent origin; it is the product of the struggle and discipline of fifty years. While this great social force may be diverted into other channels, it cannot be destroyed. In the future, as in the past, it must play an important part in the economic development of the state.

CHAPTER II.

SLAVE OR FREE LABOR IN CALIFORNIA?

THE SLAVERY QUESTION PRIOR TO 1849.

Although many of our ablest historians believe that in settling this, her first labor problem, California became the determining factor in the great controversy which was soon to imperil the nation, up to the time of her admission to the Union the opposition to slavery on the part of her inhabitants was so unanimous that the question could hardly be considered debatable. Slavery was abolished in the Mexican provinces in 1829, and, aside from a few disputed cases where the services of Indian retainers were bartered, it had never existed in California. Only a small number of free negroes had found their way into the state. In 1847, of the 321 persons living at San Francisco, ten were negroes, who were said to be "as intelligent as is usual among the free negroes of the North."[1] In discussing the possible introduction of slavery, the *Californian* boasts, "Not a single instance of precedence exists in the shape of physical bondage of our fellowmen." The article is very positive in its declaration of the universal disposition to maintain this condition, asserting, "We desire only a white population in California; even the Indians among us, as far as we have seen, are more of a nuisance than a benefit to the country; we would like to get rid of them. . . . In conclusion, we dearly love the Union, but declare our positive preference for an independent condition of California to the establishment of any degree of slavery, or even the importation of free blacks."[2] A few days later the editor of the *California Star* expresses himself with equal vigor, declaring, "We have both the power and the will to maintain California independent of Mexico, but we believe that though slavery could not be generally introduced, that its recognition would blast the prospects of the country. It would make it disreputable for the white man to labor for his bread, and it would thus drive off to other homes the only class of emigrants California wishes to see; the sober and industrious middle class of society. We would therefore on the part of ninety-nine hundredths of the population of this country, most solemnly protest against the introduction of any blight upon the prosperity of the home of our adoption. We should look upon it as an unnecessary moral, intellectual, and social curse upon ourselves and posterity."[3] He quotes with approval the assertion of the *Californian*, "It would be the greatest calamity the power of the United States could inflict upon California."

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[1] *The California Star*, August 28, 1847.

[2] *The Californian*, March 15, 1848.

DISCUSSIONS OF SLAVERY IN THE FIRST CONSTITUTIONAL CONVENTION.

When our first assemblage of vigorous young lawmakers gathered in Monterey in September, 1849, to frame a state constitution, they promptly gave expression to this desire for free labor in California. The section of the Declaration of Rights which provides that, "Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State," was adopted without debate or a dissenting vote.[4] In the Memorial to Congress presented by the representatives of the newly organized state, we are assured that this but expressed the public opinion of the state. It declared, "The undersigned have no hesitation in saying that the provision of the Constitution excluding that institution meets with the almost unanimous approval of that people. . . . Since the discovery of the mines the feeling in opposition to the introduction of slavery is believed to have become, if possible, more unanimous than heretofore. The relation of master and slave has never existed in the country, and is there generally believed to be prohibited by Mexican law, consequently the original California population is utterly opposed to it. Slavery is a question little discussed in California, so settled appears the public mind relative thereto. Public meetings have scarcely ever considered it."[5]

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[3] *The California Star*, March 25, 1848. See also the article quoted from the *New York Evening Courier*, *Ibid.*, May 15, 1847.

[4] Brown, J. Ross, *Report of the Debates in the Convention of California on the Formation of the State Constitution*, in September and October, 1849, pp. 43-4.

The framers of the first California constitution wished not merely to insure the freedom of labor, but also to protect it from the degradation which they declared would be the inevitable result of association with an inferior race. No one subject was so warmly debated as the section proposed by McCarver providing that, "The Legislature shall, at its first session, pass such laws as will effectually prohibit free persons of color from immigrating to and settling in this State, and to effectually prevent the owners of slaves from bringing them into this State for the purpose of setting them free."[6] McCarver, in support of the need of such a section, said that he was acquainted with men who had received letters from the states declaring that in a short time hundreds of negroes would be brought to California for the purpose of working them in the mines prior to their liberation.[7] Steuart[8] and Semple[9] also knew of slave owners who were intending to carry out this plan, and several other members presented mathematical proofs of the great profits of such a procedure.[10] It seemed evident that, unless something were done to prevent it, the state would soon be fairly overrun with a horde of ex-slaves.

While these fears were greatly exaggerated, later history proves that they were not altogether groundless. Probably there had already been a few such cases. The census of 1850 shows less than a thousand negroes in California, but over two hundred of these were in Sacramento, the district represented by McCarver. Most of the others were located in the mining counties. Jones, a delegate from the miners, spoke as though the subject were one which they had fully discussed, declaring that, in canvassing his district, he found but one person who was not anxious to secure such an exclusion."[11]

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[5] Brown, *op. cit.*, p. xix.

[6] *Ibid.*, p. 137.

[7] *Ibid.*, pp. 137, 140.

[8] *Ibid.*, pp. 146-7.

[9] *Ibid.*, p. 138.

[10] *Ibid.*, pp. 138, 335.

[11] *Ibid.*, pp. 332-3.

The debates on McCarver's amendment were renewed at three different periods in the sessions of the convention, and over two whole days were occupied with the heated arguments which it called forth. These discussions not only throw much light on the labor conditions at that time, but in the strong race feeling displayed they foreshadow the labor controversies that have been most characteristic of the later history of the state. The points brought out in lengthy debates on the exclusion of free negroes may all be grouped under five arguments:

First, their inferiority of race would make assimilation on terms of equality impossible.

Second, they would degrade labor, and so discourage a more desirable class of immigrants.

Third, monopolies and social inequalities would result from their exploitation.

Fourth, they would constitute a vicious and disorderly element in the community.

Fifth, the expenses of governing and supporting them would increase the burden of taxation.

Wozencraft, the first speaker in support of the amendment, opened with a forceful argument to prove that when the two races were brought together certain social evils were inevitable. If they wished freedom and equality, then the inferior race must not be brought in contact with the superior, for said he, "be assured the one will rule and the other must serve."[12] He, as well as Semple,[13] indulged in lofty dreams of the future greatness of California, but in order to realize them he declared, "We must throw aside all the weights and clogs that have fettered society elsewhere. We must inculcate moral and industrial habits. We must exclude the low, vicious, and depraved. Every member of society should be on a level with the mass—able to perform his appropriate duty. Having equal rights, he must be capable of maintaining those rights, and aiding in their equal diffusion to others. There should be that equilibrium in society which pervades all nature, and that equilibrium can only be established by acting in conformity with the laws of nature.

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[12] Brooks, p. 49.

[13] *Ibid.*, p. 148.

There should be no incongruities in the structure; it should be a harmonious whole, and there should be no discordant particles, if you would have a happy unity."

The delegate from San Luis Obispo, a lawyer from New York, also set forth fully and forcefully the social evils of introducing an inharmonious element in the population. He said, "I am opposed to the introduction into this country of negroes, peons of Mexico, or any class of that kind; I care not whether they be free or bond. It is a well established fact, and the history of every state in the Union clearly proves it, that negro labor, whether slave or free, when opposed to white labor, degrades it. . . . Here are thousands upon thousands of enterprising, able, and intelligent young men, leaving their homes and coming to California. They cannot all devote themselves to digging gold in the placers here; they will be compelled to turn their attention to other branches of industry; and if you do not degrade white labor there will not be the slightest difficulty in obtaining white men to labor. But there will be a difficulty if they are to work with negroes."[14]

That these ex-slaves would degrade labor was an argument of the opening discussion which was taken up and repeated with all sorts of variations by the following speakers. The superior intelligence and culture of many of the men who had swarmed into the mines was pointed out. Their representative, who was born in Kentucky and had been a resident of Louisiana, exclaimed, "Sir, in the mining districts of this country we want no such competition. The labor of the white man brought into competition with the labor of the negro is always degraded. There is now a respectable and intelligent class of population in the mines; men of talent and education; men digging there in the pit with the spade and pick, who would be amply competent to sit in these halls. Do you think they would dig with the African? No, sir, they would leave this country first."[15]

The fear of the growth of monopolies furnished the third ground of opposition. It was asserted that these groups of negroes who would be brought by their masters to work in the mines, "would become a monopoly of the worst character. The profits of the mines would go into the pockets of single individuals. The labor of intelligent and enterprising white men who, from the want of capital, are compelled to do their own work would afford no adequate remuneration."[16] It is difficult to see how the greater profits of the capitalists could lessen the earnings of individual miners, but such were the fears of several of the delegates.

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[14] Brooks, pp. 143-5.

[15] *Ibid.*, p. 333.

There was a general conviction that the negroes were thoroughly undesirable citizens; only one man in the convention seemed willing to defend their character. He asserted that in New York he had known men of color who were most respectable citizens,—men of wealth, intelligence, and business capacity. He could not agree to any provision which would deprive such men of their rights.[17] But Hastings from Ohio, McCarver, and Semple from Kentucky, Wozencraft from Louisiana, Tefft from New York, Hoppe from Missouri, all testified against them. With these formidable indictments of shiftlessness, indolence, vice, and riotous conduct charged against them, and the assurance that thousands would be brought into the state, the suggestion that an increased burden of taxation would be necessary for their support and control gained considerable weight.[18]

However, not all the members were carried away by this strong combination of real argument and race prejudice. Dimmick and Gilbert were quite sceptical about the possibility of slave owners bringing their negroes to California in large numbers. They pointed out the difficulties, expenses, and risks of such a course, and spoke eloquently of the injustice and inconsistency of following the earlier lofty declarations of freedom and equality contained in the constitution, with this measure which discriminated against the free citizens of other states, not because, as Gilbert boldly declared, they had committed any crime, but simply because they were black.[19] Gilbert also pointed out that such a provision would be in conflict with the section of the United States Constitution which provided that, "The citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several states." He did not believe that Congress would accept the constitution with such a provision.[20] Notwithstanding his impassioned plea in the name of justice and human progress, the committee of the whole adopted McCarver's amendment providing for legislation excluding free negroes from the state.

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[16] Brooks, p. 144; see also pp. 138, 140, 142, 146.

[17] *Ibid.*, p. 148.

[18] *Ibid.*, 331.

[19] *Ibid.*, p. 149.

When the measure came up for the final vote two weeks later, the opinions of the delegates had undergone a great change. The fears that such a section might delay the admission of the state were strengthened by references to difficulties with a similar provision in the Missouri constitution.[21] Other members felt that the constitution was becoming overburdened with provisions, and that the convention was encroaching on the functions of the legislature. The fate of the measure was settled by the announcement of a San Francisco delegate that he had heard from his constituents and they were much opposed to the measure. Indeed, he declared that should the constitution contain such a provision, it would be unanimously rejected in San Francisco.[22] By a standing vote of 9 to 33 the amendment was lost.

COMPROMISE MEASURES BY WHICH CALIFORNIA WAS ADMITTED TO THE UNION.

It is evident that the members of the constitutional convention had but little realization of the national significance of this question of the type of labor to be admitted to California. The section of the new constitution excluding slavery which they had accepted without question was for months the subject of the most violent controversy on the part of the representatives of the older states. The great statesmen were brought face to face with the hideous possibilities of disunion and all its terrible consequences, as realized ten years later. They succeeded at last in postponing the struggle by the compromise measures which admitted California with the free labor which her people desired, but left the matter of slavery an open question in the remainder of the territory purchased from Mexico, settled the disputed Texas boundary, prohibited the slave trade in the District of Columbia, and enacted a drastic fugitive-slave law. It seems probable that, had the constitution also contained the section prohibiting free negroes from entering the state, it would have been rejected, as such a section might have antagonized the more radical defenders of the rights of the negro, who worked hardest to secure the admission of California as a free state.

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[20] Brooks, p. 150.

[21] *Ibid.*, p. 334.

[22] *Ibid.*, p. 338.

The long delays in admission, occasioned by the discussion of the slavery question, seem to have given the subject a different significance in California. Her lawmakers became a little more cautious about legislation on this topic, and those who secretly desired slavery began to hope that, with this evidence of strong support from other sections of the country, the matter was not an entirely closed issue in California.

EFFORTS TO EXCLUDE FREE NEGROES.

P. H. Burnett, the first governor of the state, was thoroughly committed to the policy of excluding negroes from the Pacific Coast states. While a member of the Oregon legislative committee, he introduced a measure which provided that any free negro or mulatto who did not leave the state within the time prescribed by the law, should be arrested and flogged at intervals of six months until he left. To the credit of Burnett it must be added that a few months after the passage of this barbarous measure he introduced an amendment providing a more humane method of ridding the state of this unfortunate class of citizens. They were to be arrested and hired to persons who, for the shortest term of service, would undertake to remove them from the state.

In his inaugural message in December, 1849,[23] and again in 1851,[24] Governor Burnett urged legislation to prevent the bringing of indentured negroes to California. He believed that the time was approaching when the natural increase of the population in the states east of the Rocky Mountains would render slave labor of little value, and thought that negroes under contract to work a few years in return for their freedom, would be brought to the Coast in great numbers. He pointed out that, since the laws of the state treated them as an inferior race, denying all the rights of citizenship, they would have no incentives to improve their characters. He thought that the negroes should either be admitted to all the privileges guaranteed in the constitution, or altogether excluded. Attempts were made in the 1850 and 1851 sessions of the legislature to carry out the recommendations of the governor; the bill of 1850 passed the assembly, only to be indefinitely postponed in the senate,[25] while that of 1851 seems to have died in the assembly committee to which it was referred.[26] Thus the bills "to prevent the emigration of free negroes and persons of color" never became laws.

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[23] *Journals of the California Legislature*, 1850, pp. 38-9.

[24] *Ibid.*, 1851, pp. 19-21.

INCREASE OF THE NEGRO POPULATION.

While negroes were not brought to the state in such large numbers as had been predicted by members of the constitutional convention, it is evident that there was a sufficient number of such cases to keep alive the fears of those who had advocated legislative restriction. Governor Burnett, in his message of 1851, says, "As was anticipated, numbers of this race have been manumitted in the slave states by their owners and brought to California, bound to service for a limited period as hirelings. We have thus, in numerous instances, practical slavery in our midst. That this class is rapidly increasing in our state is very certain."[27]

The San Francisco papers noticed the coming of these so-called "servants." The steamer *Isthmus*, arriving April 15, 1852, is reported to have "brought up several gentlemen with a number of servants—one with twelve, another eight, another seven, another five, and so on."[28] The *Pacific* quotes this notice from the *Herald* and adds, "We also learn that many of these 'servants,'—and under our present constitution they are nothing more,—have lately arrived in various steamers with their masters, and been distributed through the interior."[29] Both papers quote from the Charleston *Courier* a statement that one steamer had, on her last two trips, taken out seventy-four slaves belonging to passengers bound for the gold diggings. The article adds that the reports from the mines continue favorable, and that a large number of negroes will be taken out on the next trip.

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[25] *Assembly Journal*, 1850, pp. 723, 729, 873, 1223, 1232. *Senate Journal*, 337, 338, 347.

[26] *Assembly Journal*, 1851, pp. 1315, 1440.

[27] *Ibid.*, 1851, p. 21.

ATTEMPTS TO SECURE CONCESSIONS TO SLAVERY.

This increase of "servants" whose masters were strongly interested in retaining their control brought about a more open advocacy of concessions to slavery. One southerner, writing to the *Pacific* in its favor, presented the somewhat novel argument that negro labor was necessary because the prevalence of poison oak made it impossible for white men to develop the agricultural resources of the state.[30] A member of the legislature, born in Virginia, wrote to an eastern correspondent that the gold mines could be worked more profitably by slaves than in any other way, and that the legislature would probably pass a measure admitting them. James Gadsden and other prominent southerners became interested in a plan to bring out a colony which should include two thousand negro slaves. This plan must have been widely discussed, for, though it seems to have originated in South Carolina, it was criticized in the papers of Louisville, Kentucky.[31] A letter from Gadsden published at Shreveport, Louisiana, proposed to build a great highway to the Pacific, which should later become the route of the overland railroad. He wanted the people of that place to apply to the Government for the survey of the road, military protection, and possibly subsistence. He said that, should this request be granted and the California legislature respond favorably to the memorial of the proposed colony, "you will see us with some five hundred to eight hundred domestics, and two or three hundred axes opening the highway to the cultivation and civilization of the shores of the Pacific."

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[28] *San Francisco Herald*, April 16, 1852.

[29] *The Pacific*, April 23, 1852.

[30] *Ibid.*, March 12, 1852.

[31] *Ibid.*, April 23, 1852.

"Mr. Peachy presented a most extraordinary Memorial to the House this morning," wrote a San Francisco newspaper correspondent two months later, "a Memorial of twelve hundred and eighteen citizens of South Carolina and Florida, asking the Legislature of California to grant them, as an essential benefit to this State, the privilege of becoming citizens, of identifying themselves permanently with our interests,—and emigrating to our rural districts with a valuable and governable population in the relation of property, by whose peculiar labor alone our valuable soils may be rendered productive and our wilderness may be made to blossom as the rose. They ask permission to colonize a rural district with a population of not less than two thousand slaves. Upon the reading of this petition, as you will readily conceive, a highly exciting discussion occurred. A multitude of motions were made respecting it, but a motion to send it to the Committee on Federal Relations finally prevailed." As the legislature had no power to grant such a request the matter went no further.[32]

MOVEMENT FOR A DIVISION OF THE STATE.

Those wishing to obtain concessions permitting slavery must do so either by an amendment to the constitution or by a division of the state. The latter course would have permitted the organization of the southern part of the state as a territory, which, by the provisions of the Compromise of 1850, would have been open to slavery. The efforts to bring about a division of the state began in the summer of 1851;[33] its immediate cause being the disproportionate amount of taxation borne by the southern counties, and the discontent due to their neglect in the distribution of political patronage. A convention was held in August,

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[32] *Daily Evening Picayune*, February 11, 1852. *Assembly Journal*, 1852, p. 159.

[33] *Daily Evening Picayune*, August 2, 1851.

1851, at Santa Barbara for the consideration of the subject. The opportunity for the introduction of slavery offered by such a movement was quickly realized. During the next six years bills for the calling of a constitutional convention came before every session of the legislature, and the charge was freely made that the desire to introduce slavery was the real motive behind these persistent efforts. The alarm was sounded with the introduction of the first of these measures in 1852. The *Pacific*, a paper strongly opposed to slavery, asserted that, "It is now too well known to need repeating that the principal object had in view by those who advocate the proposed convention is that our Constitution may be so amended as to permit slavery, which it now prohibits."[34] The article declared that the class of gentlemen from the South, "who had bound themselves, by fair means or by foul, according to law, or in contempt of it, to open California to slavery, seems to be remarkably represented in our present legislature."

This pro-slavery membership made possible the fugitive-slave law of 1852, but failed to secure the passage of the bill providing for the constitutional convention. This measure became the chief issue of the next session of the legislature, to which the members came prepared for a vigorous contest. The Free-Soil Democrats[35] had effected a somewhat tardy organization in October, 1852. They made no nominations, but elected a state central committee, whose chief function seems to have been the pointing out of the danger of choosing members to the legislature who would promote the plans to introduce slavery by means of a revision of the constitution. The governor's message to the legislature of 1853 recommended a number of changes in the constitution, and much time was given to the discussion of bills for carrying out his suggestions. A particularly objectionable measure which would have allowed the people no opportunity to reject the work of the convention almost became a law.[36] The efforts to secure the revision of the constitution were renewed from year to year, until at last it came before the people in 1857, when it failed to obtain the necessary majority,[37] and so put an end to all hopes of securing an opening for slavery in Southern California.

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[34] *The Pacific*, March 19, 1852.

[35] *Ibid.*, October 22, 1852. Davis, *Political Conventions of California*, p. 23.

[36] Appendix to *Senate Journal*, Doc. 16, 17.

THE CALIFORNIA FUGITIVE-SLAVE LAW.

The only concession to slavery granted by the laws of California was the bill passed in 1852 entitled, "An Act respecting fugitives from labor and slaves brought to this State prior to her admission into the Union."[38] The first three sections of this statute charged the state courts with the enforcement of a fugitive-slave law, whose provisions differed in no essential respects from those of the Federal law passed as one of the compromise measures by which California was admitted to the Union. All the objectionable features which made that law so odious to the free states were repeated in the California statute. The owner or his agent was empowered to seize the fugitive, or obtain a warrant for his arrest to be granted by any judge, justice or magistrate of the state. The same summary procedure at the hearing to obtain the certificate authorizing removal was sanctioned, and the testimony of the fugitive on his own behalf was not admitted. Persons obstructing the arrest, assisting in escape, harboring or concealing such a fugitive were subject to a fine of not less than $500, imprisonment not less than two months, and civil damages to the claimant of $1000. Officers who neglected to enforce the law were liable to a fine of from $500 to $1000, and were subject to removal from office; if the fugitive escaped through their neglect, assent, or contrivance, the officer or officers responsible must pay the claimant the value of the slave.[39]

The real motive for the passage of this law was not the desire to secure the return of fugitive slaves. Indeed, it is doubtful whether any genuine cases of this kind ever occurred in California, as the difficult and expensive trip from the slave states to the Pacific Coast would have been an impossible achievement for a newly escaped slave. But a number of cases had come before the courts in which the questions of the right of a master to retain or remove his former slave from the state were raised. In the first cases which occurred soon after the admission of the state, the alcalde of San Francisco returned the slave to his master, while the Sacramento judge freed him on the ground that slavery was prohibited by the constitution. In the following year there were two cases where attempts were made to remove slaves from the state.[40] In both instances this was prevented by the courts. In the first of these cases, occurring in April, a San Francisco judge decided that the slave whose master wished to remove him was entitled to his freedom, since he had been voluntarily brought to the state after its admission. A few months later a case of a mulatto child, who had been brought to the state in 1849, came before the Los Angeles courts. The master was allowed to retain the custody of the child acting in the capacity of guardian, but was required to give a bond not to remove her from the county. It is evident that, as interpreted by the California courts, the Federal fugitive-slave law would not permit the removal of these numerous negro "servants" from the state.

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[37] Davis, *op. cit.*, p. 84.

[38] *Statutes of California*, 1852, p. 77.

[39] *Ibid.*, 1852, pp. 67-8.

The real object of the law of 1852 was embodied in the fourth section, which provided that, "Any person or persons held to labor or service in any State or Territory of the United States of America, and who shall refuse to return to the State or Territory where he or they owed such labor or service, upon the demand of the person or persons, his or their agent, or attorney, to whom such service or labor was due, such person or persons so refusing to return, shall be held and deemed fugitives from labor within the meaning of this Act, and all the remedies, rights, and provisions herein given claimants of fugitives who escape from any other State into this State are hereby given and conferred upon claimants of fugitives from labor within the meaning of this section."[41]

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[40] *San Francisco Herald*, April 1, 2, 1851; *Hayes Scrap Books*, Los Angeles, No. 28. (Unpublished books of manuscripts and clippings in the Bancroft Library, University of California.)

[41] *Statutes of California*, 1852, p. 69.

When the bill was introduced in the assembly, this portion was the subject of what the correspondent of a San Francisco paper characterizes as "a keen, vehement, and powerful debate." It was pointed out that this practically introduced slavery into the state for an indefinite period. An amendment was passed which limited the time for the recovery of such slaves to one year from the passage of the bill. Out of respect for the constitutional prohibition of involuntary servitude within the state, it was provided that masters could reclaim such so-called fugitives only for the purpose of removal from the state.[42]

Although the passage of the bill was hotly contested in the senate, all efforts to secure some scant measure of justice for the negro failed. The amendment providing that the person arrested should have the right to be heard by counsel, and to enforce attendance of witnesses as in cases of arrest for crimes, was lost.[43] Many of the negroes who had been brought to the state under indentures had honestly earned their freedom. The provisions of this section of the law permitted their recapture and return to slavery. Broderick's strenuous efforts to procure the passage of an amendment exempting such persons from the operations of the law, were unsuccessful. The most weighty argument in support of the measure was that which contended that the United States constitution protected property of citizens in all territory under its jurisdiction, and that the California constitution provided for the future, but did not effect property rights existing at the time of its adoption.[44] The time allowed for the recovery of slaves was extended by the legislature of 1853 and 1854; thus for six years after the people had framed their Declaration of Rights prohibiting slavery or involuntary servitude, negroes were held in bondage,—were even bought and sold in California.

A few months after the passage of the law, it was held to be constitutional in the case of three negroes claimed by a man named Perkins. These darkies, who were brought to California in 1849 under an agreement to work for their freedom, declared that they had worked the stipulated time in fulfillment of their contract. Their master had returned to Tennessee, but on the passage of the law sent out an order for their apprehension. Evidently the negroes had made good use of their brief period of freedom, for, when arrested, they had a span of mules, a wagon, and about four hundred dollars in money.[45]

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[42] *Daily Evening Picayune*, February 6, 1852.

[43] *Senate Journal*, 1852, p. 277.

[44] *San Francisco Herald*, February 8, 1852.

The captives made a determined fight for their freedom. They were arrested in Placer County and brought to Sacramento, where a justice of the peace granted the certificate authorizing their removal from the state. On the refusal of the County Court to release them on a writ of habeas corpus, they appealed their case to the Supreme Court,[46] where opinions on the constitutionality of the law were written by Chief Justice Murray and Justice Anderson. Justice Murray cited instances in which Federal statutes had been reinforced by state laws, and declared that the state had concurrent jurisdiction in slavery legislation by virtue of its police powers. Since the status of the fugitive from service must finally be determined in the state where his services were claimed, the law did not violate the right of trial by jury by providing for the removal of the person without trial. Property rights in this class of persons were recognized by the Constitution of the United States, which became the supreme authority after the conquest of the territory, and the state prior to her admission had no authority to impair any rights or obligations subsisting under the Federal constitution.

Justice Anderson went even further in emphasizing this property right in slaves, forestalling the Dred Scott decision in declaring that the temporary residence of a slave in free territory did not change his servitude. Moreover, he asserted that legislative enactment was necessary in order to make operative the clause of the Constitution of California prohibiting slavery. Since the legislature had failed to emancipate the slaves in the state at the time of her admission, their masters still had a right to their services. By order of the court the three men were remanded to the custody of the officer, to be taken from the state and returned to their former owner.[47]

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[45] *The Pacific*, June 18, 1852; *Herald*, June 4, 1852.

[46] *In re Perkins*, 2 Cal. 429-459.

We find records of similar cases of the enforcement of the law, and doubtless many negroes, realizing the hopelessness of their position, returned to slavery without a protest. Some were able to buy their freedom, and in a few instances sympathizing friends paid the money necessary to insure their liberty. A curious case of this kind occurred in Sacramento. For several days this advertisement appeared in the *Democratic State Journal*:

> "Negro for Sale.—On Saturday the 26th inst., I will sell at public auction a Negro Man, he having agreed to said sale in preference to being sent home. I value him at $300, but if any or all of his abolition brethren wish to show that they have the first honorable principle about them, they can have an opportunity of releasing said negro from bondage by calling on the subscriber, at the Southern House, previous to that time and paying $100. I make this great sacrifice in the value of the property, to satisfy myself whether they prefer paying a small sum to release him, or play their old game and try to steal him. If not redeemed, the sale will take place in front of the Southern House, 87 J St., at 10 o'clock of said day."

To the credit of the "abolition brethren" of the little humpback negro, who had been earning his living by blacking boots, it is recorded that the hundred dollars were promptly paid.

Another such example was that of Judy, an old negro woman who had become a familiar figure about town at Los Angeles. She had been her own mistress for some time, but on the passage of this law, steps were taken to reclaim her and return her to the South. B. D. Wilson, the first county clerk of Los Angeles, paid five hundred dollars to save her from this fate.[49] In other instances the negroes made agreements with their masters by which they earned their freedom. Tinkham says there were many such cases in Stockton.[50] The first recorded document of Butte County was a negro manumission paper,[51] and Dr. Duniway reports that in his investigation of the early California county archives he found many of these papers issued down to 1856.[52]

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[47] *In re Perkins*, 2 Cal. 443-459.

[48] *The Pacific*, June 25, 1852.

[49] *Hayes Scrap Books*, Los Angeles, I, No. 28.

[50] Tinkham, Geo. H., *A History of Stockton*, p. 128.

[51] Wells, Harry L., *History of Butte County*, p. 199.

Section 4 of the California law, which permitted masters to retain possession of negroes brought to the state before 1850, lapsed in 1856. After this date several attempts were made to reclaim negroes under the state and Federal fugitive-slave laws. A case in Los Angeles tried in 1856 involved the freedom of fourteen persons. A man named Smith had brought two negro women and their children to California, and four additional children had been born in the state. He wished to remove his whole "patriarchal family" to Texas where, since no free negroes were permitted, they would return to the status of slaves. But the California courts intervened, and placed the minors in the custody of the sheriff in order to prevent their being taken from the state.[53]

THE LAST CALIFORNIA FUGITIVE-SLAVE CASE.

The last, and in many respects the most interesting of the California fugitive-slave cases, was tried in 1858. For three months the whole state was stirred to an excited interest in the fate of Archy Lee,[54] a young negro whose master wished to take him back to Mississippi. C. V. Stovall, the claimant, was one of three brothers who arrived in California by the overland route in the fall of 1857. Archy, who is described as "a tolerable specimen of a young negro whose blood is not debased by any admixture of Anglo-Saxon stock," drove the ox-team of his master and cooked for the party. The master bought a farm in the Carson Valley, and, on arriving in Sacramento, hired out his slave and opened a private school. Stovall's school did not prosper, and after six weeks Archy's employment was interrupted by sickness; so in January, 1858, young Stovall, who was in poor health, decided that he would return with Archy to Mississippi. But at the outset of the journey Archy, who no doubt had learned of his rights from the many free negroes in Sacramento, escaped and hid in a negro boarding house. The hiding place of the negro was soon discovered, and he was arrested and brought before the County Court. Judge Robinson decided that Archy was not a fugitive from labor within the definitions of the state or federal laws, and that Stovall, by the length of his stay and the fact that he had engaged in business, had forfeited his right to claim that he was a transient. He argued, "Comity can never extend to strangers anything beyond the rights and privileges which the State allows its own citizens. Now if a man may retain his citizenship in the State of Mississippi, and sojourn here two months and work his slave, why may he not stay twenty years and work twenty slaves? The principle is precisely the same. The law would not permit a citizen of this State to hold and work a slave against his consent, and what it does not allow its own citizens to do, it cannot be reasonably expected to sustain strangers in doing."[33]

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[52] *Ann. Report American Historical Society*, 1906, p. 224.

[53] *Hayes Scrap Books*, Los Angeles, I, No. 519.

[54] *Sacramento Daily Union*, January 9, 12, 27; February 11, 12, 13; see also the San Francisco papers.

The accommodating judge had made known an hour beforehand what his verdict would be, so that Stovall was able to obtain another warrant before the negro was released. No sooner was the verdict pronounced, than the bewildered negro was re-arrested and, followed by a great crowd of sympathetic whites and negroes, led back to his cell. The case was then brought before the state Supreme Court on a writ of habeas corpus.

We have seen that P. H. Burnett, who was now on the Supreme Court bench, and who wrote the leading opinion in this case, had been uniformly opposed to the admission of negroes to the Pacific Coast states. Justice D. H. Terry, his associate in this case, was also a southern man. There can be no question but that, in this case, they allowed their prejudices rather than the law to dictate the decision. After carefully demonstrating that, by the length of his stay, and by entering into various business transactions, Stovall had forfeited the right to claim that he was a transient or traveler, and that Archy, who was voluntarily brought to the state, could not be removed under the fugitive slave laws, the court pronounced this astonishing decision: "From the views that we have expressed, it would seem clear that the petitioner cannot sustain either the character of traveler or visitor. But there are circumstances connected with this particular case that may exempt him from the operation of the rules we have laid down. . . . This is the first case and under the circumstances we are not disposed to rigidly enforce the rules for the first time. But in reference to all future cases, it is our purpose to enforce the rules laid down strictly according to their true intent and spirit." As further reasons for this judicial suspension of the constitution and laws of the state, the judge pointed out that Archy's master was young and might not have known the law, and being in poor health had need of the services of his slave.[56]

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[33] *Sacramento Daily Union*, January 27; see also January 9, 11, 12, and *San Francisco Bulletin*, January 28.

The early Californians could countenance the extraordinary judicial proceedings of the Vigilance Committees, and were certainly but slightly bound by precedents of any kind, but when the Supreme Court of the state delivered a convincing legal argument, followed by a decision diametrically opposed to its conclusions, every one, even the miners up at Rattlesnake Bar, was conscious of an outraged sense of justice. The papers of the state were immediately filled with protests which were couched in no uncertain terms.[57] They declared that the decision which, as one paper remarked, "gave the law to the North and the nigger to the South," "was a disgrace to the judges, would bring odium upon the State, and render the Supreme Bench of California a laughing stock in the eyes of the world." The miners sent down a facetious "Syllabus of points decided," among which they included such rulings as, "The Constitution never operates for the first time." "The Constitution never operates against a young man traveling for his health." "Constitutional rules to be relaxed in behalf of the infirm and indigent." "Decisions of the Supreme Court not to be regarded as precedents for the first time." "A man may gain all the law in the case and lose himself," etc.

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[56] *Ex parte* Archy, 9 Cal. 147, 171.

[57] *Sacramento Daily Union*, February 12, 1858; *San Francisco Bulletin*, February 13, 1858; *Alta*, February 14, 1858.

In the meantime the case was causing much excitement in San Francisco. When it was reported that Stovall, who had taken his heavily manacled and carefully guarded slave from Sacramento to Stockton, was soon to come to San Francisco to take passage for Panama, the negroes of the city determined to effect a rescue. At the time when Archy and his master were expected to arrive, the water front was patrolled day and night by between fifty and a hundred negroes. A prominent negro citizen had sworn out a warrant charging Stovall with kidnaping, and had also secured another writ of habeas corpus authorizing the apprehension of Archy. An officer was kept in readiness to serve these papers. As it was feared that Stovall would board the ship after it had left the dock, it was arranged to have outgoing ocean vessels accompanied by officers until they were outside the Heads. It hardly seems probable that the negroes of the city could have accomplished all this without the assistance of influential white friends.[58]

As had been anticipated, Stovall, who feared the attempt to rescue Archy, undertook to board the outgoing vessel after it got under way. In the midst of a scene of great excitement, Stovall and Archy were arrested and taken back to the wharf where they were received by a wildly cheering crowd.

E. D. Baker, one of the ablest lawyers and most eloquent orators of the early California bar, undertook to conduct the legal fight for Archy's freedom which now commenced in the San Francisco courts.[59] The case came first before the San Francisco County Court, and was then transferred to the United States Commissioner. It will hardly be profitable for us to go into the details of the trial which was fully reported in the papers, and followed with much interest by the people of the state. Witnesses were brought from Sacramento, and the evidence for both sides fully presented. After listening to the eloquent discussion of the case by the able counselors, Commissioner Johnson gave Archy his freedom.[60]

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[58] *Bulletin*, March 5, 6, 7, 1858; *Alta*, March 6, 7, 1858.

[59] *Bulletin*, March 17, 18, 20, 29, 30, 31; April 6, 7, 14, 1858.

[60] Baker was elected United States Senator from Oregon two years later.

The news of the decision quickly spread, and a great crowd rushed to jail to witness Archy's release. That night the free negroes of San Francisco, Archy in their midst, gathered to celebrate the great victory. The click of the coins so generously poured out to complete the payment of the expenses of Archy's defense was drowned in the great chorus,—five hundred strong,—that shouted the familiar hymns modified to fit the great occasion:

> "Sound the glad tidings o'er land and o'er sea,
> Our people have triumphed and Archy is free!"
>
> "Blow, ye trumpets blow!
>   The gladly solemn sound,
> Let all the nations know
>   To earth's remotest bound,
> The year of Archy Lee is come,
>   Return ye ransomed Stovall home."

The colored citizens of the state were becoming quite discouraged, as, in addition to the Supreme Court decision in this case, a bill had been presented in the legislature to prohibit the immigration of free negroes and mulattoes.[61] The San Francisco negroes held a meeting to protest against the passage of this measure. It was pointed out that such a statute was entirely unnecessary, as only twenty-four negroes had come to the state during the past year. They were still without political rights, and the legislature had promptly refused to consider the petition of the San Francisco negroes requesting that they be permitted to testify in the courts in cases to which white men were parties. This right was not granted until 1863. Such was the dissatisfaction that there was much talk of a plan to emigrate in a body, and Vancouver Island and Sonora were discussed as possible places of settlement.[62] The reversal of the decision in the Archy case gave the many freedmen in the state a greater sense of security. They seem to have been right in their feeling that it marked a turning point in the history of the negroes in California, for there were no more fugitive-slave cases, and the more active campaign against them ceased.

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[61] *Assembly Journal*, 1857, pp. 811, 823, 824.

[62] *Bulletin*, April 14, 1858.

Throughout the period when the negro was the subject of legislative action, the measures presented were a reflection of the polities of older states, or were efforts to avert anticipated evils, rather than attempts to deal with problems that had actually developed to such proportions as to threaten the welfare of the state. In California as in other parts of the country, the active pro-slavery minority were able to profit by the disposition to make concessions rather than endanger the public peace and unity. By 1860 there were only about 4,000 negroes in the state, and the Chinese numbered 47,000; the people had begun to realize that not negro, but Chinese labor, would be the real race problem of the Pacific Coast.

CHAPTER III.

CALIFORNIA LEGISLATION FOR THE EXCLUSION AND REGULATION OF THE CHINESE, 1852-1867.

Legislation prohibiting the further immigration of Oriental laborers has been the chief object of the organized activities of the working people of California for over fifty years. Those whose occupations have brought them into direct contact with the Chinese or Japanese have never had but one opinion as to the significance of their admission; whether in the mining camps of the early fifties, or in the factories and workshops of the later periods of industrial development, we find the same bitter complaints of the evils of such competition. Had the state been able to legislate on the subject, the question would have been settled long before the Chinese had arrived in sufficient numbers to constitute a serious race problem, but since Congress claimed the exclusive right to regulate immigration, it was necessary to convince the nation before the desired relief could be obtained. The small minority within the state whose interests were opposed to restrictive legislation were greatly reinforced by the merchants of older states, who feared to jeopardize the rich trade of the Orient, and by idealists who were loth to recognize the world-old significance of *race* in the application of their theories of political and social equality. By the persistent efforts of the working people of California first the state and then the nation have been converted to the policy of Oriental exclusion.

THE BEGINNING OF CHINESE IMMIGRATION.

The small number of Chinese merchants who came to California with the first rush of gold-seekers met with a cordial reception, for the thought that the Golden Gate would soon become the port of entry for the rich commerce of the Orient appealed strongly to the early Californians. These first arrivals were shown special honors; we hear of them occupying a conspicuous place in the San Francisco celebration of the admission of the state. They quickly realized the golden opportunities of this new land, where they were received with a hospitality hitherto undreamed of in the overcrowded Orient. We cannot do better than to quote their own account of first impressions: "We remember the time when the report went abroad of the great excellence of your honorable state and its inhabitants. The people of the Flowery Land were received like guests. . . . In consequence, with the hope and desire of enjoying a residence where the customs were so admirable and just, we came. In those early times we were greeted with favor. Each treated the other with politeness. From far and near we came, and were pleased. Days and months but added to our satisfaction. The ships gathered like clouds."[1]

Such favorable reports quickly resulted in an extensive immigration. Parker, our representative in China, wrote to Webster in March, 1852, that 14,000 Chinese had emigrated to California since January 1, 1851, nearly half of them sailing after January 1, 1852. He said that already there was a fleet of fifty to sixty vessels employed in conveying Chinese to the United States, and that the business was very profitable, as $50 per head passage money was charged.[2] The officers of the Chinese Companies gave an even larger estimate; declaring that early in 1852 there were 25,000 Chinese in California, but that many of these left after the opposition to them developed, so that there were 22,000 remaining in 1853.[3] This decline was only temporary, as they reported 38,687 registered in their Companies two years later, a figure which is much more accurate than the governor's greatly exaggerated estimate of fifty to sixty thousand.[4]

The period of this first extensive immigration was that of the greatest development of what is generally spoken of as the

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[1] Brooks, B. S., *Appendix to the Opening Statement and Brief on the Chinese Question*, San Francisco, 1877.

[2] Ex. Doc. No. 105, 34th Cong., 1st Sess., Serial No. 859.

[3] Report of Committee on Mines, *Assembly Journal*, 1853, Appendix, Doc. 28.

[4] Minority report on Resolutions of Shasta Miners' Convention, *Senate Journal*, 1855, Ap., Doc. 19.

"coolie trade." It has been estimated that between 1847 and 1859 fifty thousand of these contract laborers were shipped to Cuba alone.[5] The conditions of the traffic were, if possible, worse than those of the African slave-trade.[6] There has been much discussion of the relation of the California Chinese immigration to this trade. The legislative committees, the Governor of the state, and the Chinese Companies all agree in declaring that the earlier arrivals came as contract laborers under Chinese masters, but there is no evidence indicating that their immigration was involuntary, or that it was subject to the terrible abuses of the traffic in laborers for Cuba or the South American countries. Nor is there any reason to doubt the assertion of the Chinese Companies that the plan of bringing over large numbers by Chinese masters proved unprofitable and was soon abandoned.[7]

THE FIRST EFFORTS TO SECURE ANTI-CHINESE LEGISLATION.

The assembly committee on mines first pointed out the dangers of Chinese immigration. Their report presented April 16, 1852, declared that the policy of free mines had, in the main, proved advantageous, but that there had been accompanying evils, the greatest of which was the concentration within the state of vast numbers of Asiatics. Feeling that the time was not far distant when absolute prohibition of entry would be necessary for our own protection, they wished a resolution sent to Congress declaring that the importation by foreign capitalists of immense numbers of Asiatic serfs and Mexican and South American peons was daily becoming more alarming, that it threatened the peace of the mining regions, and urging prompt action to remedy the evil.[8]

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[5] Rep. on Coolie Trade, Com. on Commerce, 36th Cong., 1st Sess., H. R. No. 443, Serial No. 1069.

[6] The U. S. Congressional documents give the correspondence from consuls in China, Cuba, Brazil, and Japan showing the terrible conditions of this trade.

[7] Report of Committee on Mines, *Senate Journal*, 1852, Appendix, p. 669. *San Francisco Herald*, May 4, 1852.

[8] *Assembly Journal*, 1852, Appendix, Doc. 28.

Governor Bigler promptly took up the matter; a week later his special message on Asiatic immigration was sent to the legislature.[9] This called attention to the dangers of what he characterized as "the present wholesale importation of Asiatics," and declared that over two thousand had arrived in the last few weeks, and that fully five thousand were on their way. He stated that they usually came in bands of thirty or more, but that one vessel had recently arrived with one hundred on board who were under the control of one master. This message gives us the first analysis of the character of the Chinese as citizens. Governor Bigler pointed out that though there were a large number of these people in the state, not one had ever applied for citizenship. His objections to them were the same that have so often been repeated in subsequent anti-Chinese agitation. They remained a distinct people, with their own customs and laws; they lowered the standards of labor, thereby shutting out the more desirable white laboring population; they came but to dig gold to be carried back to the country to which they still owed their allegiance, never to establish a home in the land of their adoption; with increased facilities of transportation they would come in overwhelming numbers. He recommended that the legislature check the immigration by taxation, and that Congress be urged to prohibit such contract, or coolie, labor in the mines.

This message from the governor called forth many replies, and for a time there seemed to be a reaction in favor of the Chinese. They had learned at this early date the advantages of employing an able lawyer to present their side of the situation; with such assistance, they were able to obtain a favorable report from the committee on mines in the following year. Much prejudice had been aroused by the belief that a large percentage of the Chinese immigrants were exploited by a few of their countrymen who brought them to this country under contracts. While acknowledging that the earlier arrivals came in this way, the Chinese merchants declared that the plan did not prove profitable and had been abandoned, and that such contracts as continued in use were merely for the purpose of working out the cost of passage, which was often advanced.[10]

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[9] *Senate Journal*, 1852, p. 373.

Notwithstanding this assurance that the plan had proved unprofitable, some of the white people of the state sought legislation that would enable them to utilize this cheap, contract labor. As originally worded, this "Act to enforce contracts and obligations to perform work and labor," was general in its application. The opponents of negro immigration were at once aroused, as they suspected that it was designed to make profitable the working of ex-slaves. The bill was amended to apply only to contracts made in "the Chinese dominions or in any of the islands of the Pacific Ocean." The representatives of the miners secured a further modification by which the introduction of such labor in the mines was prohibited. Even with these restrictions in its application, the bill met with much opposition. There was great excitement when, after a heated debate, it passed the assembly, and an indignation meeting was held that evening where the "Coolie Bill" and its supporters were vigorously denounced.

When the majority of the senate committee on mines reported favorably on the bill, the fears that it might become a law were increased, but the minority report of P. A. Roach saved California from the disgrace of such a sanctioning of involuntary servitude. He pointed out the unprecedented prosperity of the state under the existing system, where labor was free to seek its rewards with the few but just regulations made by the working men. Since all capitalists were free to profit by the proposed arrangement, competition would quickly reduce the gains, thus the cheap labor would not result in the more profitable employment of capital. The many social evils of such a system were presented. The whole people would be charged with the expense of enforcing these contracts, whereas this should fall on those who reaped the profits. Such a measure was utterly out of harmony with our free institutions. The oppressed of other nations would be betrayed by their faith in our laws into committing themselves to a situation which might work great hardships. Twenty years later this report was reprinted to serve as a campaign document in the anti-Chinese agitation, and its author, who still took an active interest in public affairs, was credited with prophetic insight.[11]

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[10] *Senate Journal*, 1852, Appendix, Rept. of Com. on Mines.

OPPOSITION TO THE CHINESE IN THE MINING CAMPS.

The Chinese name for California was "The Golden Mountains," and they, like the people of other nations, were attracted by the wealth of the mines. The miners, who were the first to meet large numbers of Chinese workers, led in the opposition to them as they had in all the efforts to exclude negro labor from the state. This was not solely due to the fact that the mines afforded the most frequent opportunities of contact and competition between the differing types of labor. As we become better acquainted with the social and political characteristics of the early California mining camps, we realize that these newcomers must have been utterly out of place in such communities.

It has been suggested that when men are brought into contact with a primitive environment, they adjust themselves by a return to earlier forms of social organization. This was true in a large measure of the California mining camp. There were none of those stratifications which serve to protect one from a too intimate contact with persons whose habits or racial characteristics may be repugnant. Its members left behind all claims to social recognition based on family, social ties, or previous attainments. Distinction was commanded solely by the vigor, personal courage, and good-fellowship, which best fitted one for the rough life of the little democracy. Every one worked with pick and shovel; moreover, every one boiled his own beans, and even did the occasional washing that could not be avoided. There were no servants and so there could be no menial labor.

Every claim-owner was entitled to a voice and vote in the settlement of all questions of public policy. The extent of the claim to be held by each miner, disputed titles, and other matters of vital importance to the little community were settled in a folk-moot, which was as primitive in its procedure as that ancient assemblage which historians assure us contained the germs of all later political institutions. This meeting also tried offenders, determining their guilt or innocence, and affixing the penalty either by the vote of the whole assemblage, or by a jury of six or twelve members. There was no place in such a community for any one who could not be accepted on terms of social and political equality.

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[11] *Senate Journal*, 1852, Appendix, p. 669.

At first the Chinese seem to have suffered from the common prejudice against all foreigners. The Americans resented the way in which aliens were crowding to the mines merely to get gold to be carried from the state, particularly as these men contributed little or nothing to the support of the government. As much hard feeling had been aroused by the relatively small proportion of taxation borne by the mining regions, the legislature undertook to equalize the burden of taxation by forcing the foreigners to give up a share of the wealth which they were taking from the state. In 1850[12] a law was enacted which required all who were not native-born citizens of the United States, or who had not acquired citizenship by the treaty of Guadalupe Hidalgo, to take out a license before doing any work in the mines. The fee for this license was fixed at twenty dollars per month, and failure to take out the license was punishable by expulsion from the mines, or, in case of a second offense, by three months' imprisonment and a fine of a thousand dollars. It was argued that the payment of this tax would allay the feelings of antagonism against foreigners, and would also constitute a just contribution towards the expenses of government.[13]

The attorney-general immediately instituted proceedings to test the constitutionality of this law. It was decided by the state Supreme Court that such a tax was not in violation of the Constitution of the United States, as in levying it, the state exercised a power not expressly conferred on the Federal Government; that after foreigners had landed and intermingled with citizens they became subject to taxation by the state for police purposes, or to pay for the government which gave them protection. The state also had a right to prescribe conditions upon which aliens might enjoy a residence within it. The court held that the law was not in conflict with the section of the state constitution which provided that, "Taxation shall be equal and uniform throughout the State," as this section referred only to the property tax, and not to the aggregate tax.[14]

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[12] *Statutes of California*, 1850, p. 221.

[13] *Senate Journal*, 1850, Appendix, Rept. of Green, chairman of Com., p. 493.

The law met with much opposition, as the tax was so high as to be prohibitive for the poorer miners. Great difficulty was experienced in its collection. The Governor reported in 1851 that less than $40,000 had been realized for the state treasury, and the legislature decided that, since the operation of the law was so unsatisfactory, it had better be repealed.[15]

The foreign miners' license law was re-enacted, however, in 1852, but with the greatly reduced rate of three dollars per month. The legislators endeavored in this law to offer inducements for its collection and payment; half of the money collected was to be paid into the county treasuries, and an unlicensed foreign miner could not claim the protection of the courts of the state. The law of 1852 also held those employing foreigners liable for the taxes of their employees.

Even before the period of direct legislation against the Chinese, we find a growing disposition to make the license law bear more heavily on them than on other foreigners. The Chinese did not object to the payment of the license tax. On the contrary, they suggested that it be increased, in the hope that its profits might make the Chinese miners more welcome in the counties receiving it, or even win them the just protection of their laws.[16] The amendments to the law in 1853 increased the cost of the license to four dollars per month, and authorized the collection of the tax from all foreigners residing in the mining districts who were not engaged in some lawful business other than mining.[17] While the law did not discriminate between the Chinese and other foreigners, the intention to make it particularly applicable to them is shown by the passage of a second act which provided for its translation and extensive publication in the Chinese language.[18] The next modifications of the law show even more clearly the approach of the time when the Chinese were set aside as subjects for oppressive discrimination. First naturalized foreigners,[19] and then all foreigners who had declared their intention to become naturalized, were exempted from the application of the license law.[20] The Chinese at first made no attempts to acquire, and later were refused, the privileges of citizenship, so that this proved an effective method of segregating them from other foreigners.

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[14] *The People* v. *Naglee*, 1 Cal. 232.

[15] *Statutes of California*, 1851, p. 424.

[16] Rept. Com. on Mines, *Senate Journal*, 1853, Appendix.

[17] *Statutes of California*, 1853, p. 62.

EXCLUSION OF CHINESE TESTIMONY FROM THE COURTS.

A decision of the Supreme Court in 1854 contributed more than the legislative measures to this setting aside of the Chinese in a class to whom all social and political equality was denied. To it must be charged many of those lawless and unjust acts that have furnished such a disgraceful chapter in the history of the state, for it resulted in denying the Chinese the protection of the courts in many of the cases in which they were wronged. The laws of the state already prohibited the testimony of negroes, mulattoes, and Indians, in cases to which white men were parties. By Judge Murray's decision these laws were made to apply to the Chinese. The law was given this extended application by a remarkable ethnological argument in which it was declared that the term "Indian" included Mongolians, as Columbus had applied it to natives of America under a misapprehension, believing them to be Asiatics, and that until recent times the two races were supposed to belong to the same species. After presenting various reasons for his assertion that the Indians probably descended from Asiatic ancestors, his argument closes with the pertinent remark, "We have carefully considered all the consequences resulting from a different construction, and are satisfied that, even in a doubtful case, we would be impelled to this decision on grounds of public policy. The same rule that would admit them to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench and in our legislative halls."[21]

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[18] *Statutes of California*, 1853, p. 82.

[19] *Ibid.*, 1854, p. 55.

[20] *Ibid.*, 1855, p. 216.

This ruling was sustained in later decisions,[22] with results that were most disastrous for the Chinese. It made it possible for unprincipled whites to commit crimes against them with impunity, so long as there were none but Chinese witnesses.[23] Several attempts were made to pass laws admitting Chinese testimony in cases where outrages had been committed against them, but they were unsuccessful. This injustice was not remedied until the passage of the Federal Civil Rights bill, which provided, among other things, that all persons in the United States should have the same rights to give evidence as is enjoyed by white citizens.[24] A year later in a case tried in San Francisco the judge held that this law permitted the Chinese to appear as witnesses, and one Ah Chuey was duly sworn in American fashion.[25] When the California Codes were compiled in 1872, the provision excluding such testimony was omitted.[26]

PRELIMINARY SUMMARY OF THE ANTI-CHINESE LEGISLATION.

There has always been a strong interaction between the attempts to secure anti-Chinese legislation and the immigration of the Chinese. An unusual influx of these Orientals would be followed by efforts to secure exclusion laws or to discourage them by the withdrawal of business opportunities. Immediately a great decline in immigration would be noticed, but it was promptly renewed as soon as the public agitation had ceased. We have noticed the first attempt to secure anti-Chinese legislation. Twenty thousand Chinese arrived in 1852, but in the following year, as a result of Governor Bigler's message, there were two hundred more departures than arrivals. But as was pointed out, this early movement was followed by a reaction. Not only the Chinese, but also the merchants of Monterey and San Francisco protested against the adoption of the policy recommended. The result of this reaction was a vigorous renewal of immigration, over sixteen thousand arriving in 1854. The revival of opposition and the passage of anti-Chinese legislation in 1855 brought about another decline. There was an increase in the early sixties, which was again discouraged by the formation of societies opposing them among the workingmen. The demand for workers on the railroads in 1868-1869 renewed the immigration so that it once more reached the figures of 1854. This was followed by the vigorous anti-Chinese campaign of the early seventies, resulting in a decline of one-half in the number of arrivals. Though renewed once more in the period from 1873 to 1877, the bitter anti-Chinese agitation of the Workingmen's Party again brought about a decline, so that in 1880 nearly 1700 more returned to China than arrived in the state. The year of the greatest influx was 1882, when many hastened to avail themselves of the last opportunity to enter the state.

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[21] *People* v. *Hall*, 4 Cal. 399.

[22] *Speer* v. *See Yup Co.*, 13 Cal. 73. *People* v. *Elyea*, 14 Cal. 145.

[23] B. S. Brooks gives many such cases in his argument before the Congressional Committee taken from the *Bulletin*.

[24] The California judges did not agree on the subject of whether the Fourteenth Amendment admitted the Chinese to this right. Judge Provines decided that it did not and Judge Sawyer took the opposite view. See the editorials in the *San Francisco Times* of October 8 and 9, 1869.

[25] *Bulletin*, May 17, 1871.

[26] *Code of Civil Procedure*, p. 493-4.

The legislation on Oriental labor sprang from the people. The centers of anti-Chinese agitation have always been found at the points of greatest contact between the two types of labor, hence the laws on the subject have not been of the type which far-seeing statesmen first suggest, and whose support is largely a matter of the education of public opinion. They were the product of the actual experiences,—sometimes of the race prejudices,—of those in the humblest ranks of society. For thirty years the working people persistently made known their needs, winning at last a practically unanimous support in the state, so that all classes united to urge the tardy Federal legislation for exclusion. The largely instinctive judgment of the working people of California, which has refused to sanction this admixture of races, has been accepted as the policy of the nation. This origin of the anti-Chinese legislation is shown in the relationship which the different groups of laws bear to each other. The regulations made in the miners' meetings are repeated in the state laws and even in the Federal statutes; the demands of the labor unions are reflected in city ordinances, and these in turn suggested measures passed by the state legislature; while the futile attempts at state exclusion furnished the models for Federal laws regulating immigration.

The legislation upon the subject of Oriental labor has been rendered intricate by the triple jurisdiction resulting from our peculiar form of government. Police measures, the control of licenses, and of many other conditions of labor, are largely exercised by the local governing bodies of towns or cities. The state has paramount jurisdiction on the same subjects, and attempted to exercise the right to exclude altogether, or to tax heavily, the importation of undesirable immigrants. But here it came into conflict with the Federal Government, which, by virtue of its treaty-making powers and control of commerce has the right to regulate immigration.[27] The United States Supreme Court in a series of decisions has refused to recognize any state legislation encroaching on these powers. Thus the final action on this question, which was of the most vital importance in the social and economic development of California, was left to the representatives of states where no such problems had ever been met, and where there was a more or less complete ignorance of their significance.

In studying the great mass of legislation by which these law-making bodies have attempted to deal with the problems of Oriental labor, we find that the measures fall naturally into four groups:

First, the ordinances or orders of local authorities.

Second, state laws which aimed to discourage immigration by special taxation or the curtailment of political and civil rights.

Third, the attempts of the state to discourage or diminish immigration.

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[27] Passenger Cases, *Smith v. Turner*, 7 Howard 282.

Fourth, Federal legislation regulating immigration.

In studying these four groups of measures, we will find three well-marked periods of development:

First, the period prior to 1867, when the opposition to the Chinese was not well organized.

Second, the strong, well-organized, anti-Chinese movements of the later sixties and the seventies, culminating in the radical provisions of the new constitution of the state, and the Federal exclusion law of 1882.

Third, the period since the enactment of the exclusion law.

LOCAL REGULATION OF CHINESE LABOR, 1852-1867.

It is difficult to trace the history of the local regulations affecting the Chinese, or to estimate correctly the influence of those measures of which it is possible to find the record. Many of the state laws merely gave authority for local enactments, and these measures were of a character not usually enforced with any degree of uniformity.[28] Often the most significant and effective action was extra-legal. For example, there are communities where by the unanimous consent of the public, the Chinese, without sanction of law, have been effectually excluded for years.

As has been pointed out, the opposition to the Chinese developed first in the mining regions, and it is here that the legislation against them began. It is impossible to learn much of the details of these regulations of the miners. There seems to have been no uniformity in the rules governing the different districts, and we have but scanty records of the miners' meetings. We do not know what part of the status of the Chinese was determined by definite enactment, and what part by common consent. They appear to have worked only the less profitable claims, and to have acquired title by purchase from the whites, or to have leased the right to work from white owners. They worked in companies under Chinese masters. White men sometimes employed them, but it was claimed that the latter always had to pay a higher rate of wages.[29]

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[28] The law requiring a certain number of cubic feet of air to each person in sleeping apartments is an example of this. Also laws permitting the removal of Chinese houses of prostitution, or even at a later time, the removal of the Chinese quarters. The school regulations are also examples of local regulations authorized by state law.

It is evident that they were never permitted to work in some of the mining districts and that others passed laws expelling them. Bothwick, who visited several mining camps, says, "In some parts of the mines, however, the miners had their own ideas on the subject, and would not allow the Chinese to come among them; but generally they were not interfered with as they contented themselves with working such poor diggings as it was not thought worth while to take from them."[30] We have found a few newspaper reports of the acts of miners' meetings excluding the Chinese. In 1858, the Agua Fria District, Mariposa County, passed a resolution to the effect that "the regulations which have been in vogue for two and a half years prohibiting Chinese from working within our district shall be the law and rule of this district. Any Chinaman who tries to mine must leave on twenty-four hours' notice, otherwise the miners will inflict such punishment as they deem proper."[31] The Gold Hill and Placerville miners in El Dorado County passed resolutions in 1858 and 1859 to prevent the Gold Hill Canal Company from acquiring claims for the purpose of speculation by selling them to Chinamen.[32] At a mass meeting of the Gold Hill miners in 1858, resolutions were passed expelling the Chinese from Diamond Springs Township. It was provided, however, that those who had purchased claims should be allowed to work them out before leaving.[33] The miners of Colville passed a law in 1862 excluding Chinese from the mines.[34] The miners of the Buckeye Mining District held a meeting in 1867 to discuss the admission of Chinese to their district. They had never before been admitted and it was decided to continue the exclusion.[35] These examples are sufficient to establish the possibility of local action of this kind. When we consider the strong feeling against the Chinese, and the failure to obtain relief from state laws, we have every reason to believe that there were many other districts with similar local regulations.

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[29] Bothwick, J. D., *Three Years in California*, chap. xvii, Edinburgh and London, 1858.

[30] *Ibid.*, p. 262.

[31] *Bulletin*, November 24, 1858.

[32] *Historical Souvenir of Eldorado County, California*, etc., Oakland, 1883, p. 102.

[33] *Ibid.*, p. 102.

[34] *Bulletin*, December 2, 1862.

[35] *Ibid.*, September 11, 1867.

COMBINED STATE AND LOCAL REGULATIONS, 1855-1867.

There was such an intimate connection between the local and state regulations in this early period that we will not attempt to separate the accounts of the remaining anti-Chinese legislation. Instead of deciding the matter for themselves, many mining districts looked to the state for relief, demanding the passage of exclusion laws, or measures preventing the great influx of Chinese to the mines. The legislature depended on the foreign miners' license laws to achieve this latter purpose. We have already traced the history of these laws to the point where they began to be particularly applicable to the Chinese. Later modifications resulted in their bearing practically the entire burden of this tax. While this and the impositions connected with its collection undoubtedly discouraged the Chinese miners, it at the same time prevented their absolute exclusion from the mines. The heavy contributions which it brought to the county treasuries served to reconcile the miners in many districts to the presence of the Orientals, and to prevent the more general action for their entire exclusion.

The arrival of sixteen thousand Chinese in 1854 stimulated the state legislature to attempts to find ways of discouraging the immigration and excluding the Chinese from the mines. While the various committee reports agreed that some restriction of the immigration was necessary,[30] they pointed out the impossibility of removing the Chinese entirely from the state, the evils of suddenly throwing a large number of laborers into the agricultural districts, and the fact that the revenues from the miners' tax could not well be spared in many counties. Laws were finally passed taxing the immigration of the Chinese, and increasing the miners' licenses in such a way that it would soon be impossible for them to engage in that industry. The amount paid for licenses by foreigners ineligible to citizenship was increased two dollars per month, the addition to be made on October first of each succeeding year. Thus from October 1, 1855, to October 1, 1856, the tax would be $6.00; from October 1, 1856, to October 1, 1857, $8.00 per month, and so on.[37] Of course in time the tax would become prohibitive, thus accomplishing its purpose of exclusion.

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[30] Rept. of Select Com., *Senate Journal*, 1855, Appendix, Docs. 16 and 19.

It was found impossible to enforce the law subjecting the Chinese to this special tax, and the next meeting of the legislature showed a decided reaction in their favor. The majority report of the committee on mines condemned the law as "a hasty, imprudent piece of legislation, unauthorized by the existence of any evil at the time in view, or demanded by any fair expression of public opinion," while the minority report set forth the fact that the working people of the state were opposed to the repeal of the law.[38] The original tax of four dollars a month for all foreigners was restored.[39] The law was again amended in 1858, so that foreigners who declared their intention to become citizens before the passage of the act were exempt from the tax.[40] The provisions requiring the payment of the tax for all foreign employees or partners were also made more explicit. Practically the same regulations were retained until 1868,[41] when the whole matter of the collection of the tax was turned over to the counties, with the requirement that ten per cent. of the money collected be paid into the school fund, and the balance to the general county fund.

The Federal statutes regulating mines passed in 1866 and 1872 recognized the local jurisdiction of the miners' meetings; in the matter of the right to acquire title to mines, sanction was given to the exclusion of the Chinese, as only citizens or those who have declared their intention to become citizens can obtain a patent for mining land.

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[37] *Statutes of California*, 1855, p. 216.

[38] Rept. of Com. on Mines, *Senate Journal*, 1856, Appendix.

[39] *Statutes of California*, 1856, p. 141.

[40] *Ibid.*, 1858, p. 302.

[41] *Ibid.*, 1867-8, p. 173.

In 1860 the same requirement of a license costing four dollars a month was made of the Chinese fishermen.[42] The provisions of this law allowed the collector, in case of failure of payment, to seize the property of the delinquent and sell it at one hour's notice, in order to obtain the amount due. The lawless actions of unprincipled collectors often added to the burdens of the Chinese in this, as well as in the collection of the miners' tax. The law taxing the fishermen was repealed four years after its passage.[43]

The other local and state laws passed for the regulation of the Chinese during this period were not strictly industrial, but dealt with educational and police measures. Negroes, Mongolians, and Indians were excluded from the public schools in 1860,[44] although the school trustees were permitted to establish separate schools, supported by public funds, for their use. This law was modified in 1866, so that the trustees could permit the attendance of these children so long as parents of white children made no objections.[45]

In his report for 1859-1860, the San Francisco chief of police asked for the appointment of a special committee to whom he might impart the revolting facts connected with Chinese prostitution,[46] and he continued from year to year to point out its evils. The coroner and health officers united with him in describing the extremely filthy conditions in Chinatown. In October, 1865, the supervisors passed an order permitting the police to remove the Chinese houses of ill-fame to quarters where they would be less offensive to the public.[47] A few months later the state legislature passed a law that would make possible the entire suppression of these houses.[48]

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[42] *Statutes of California*, 1860, p. 307.

[43] *Ibid.*, 1863-4, p. 493.

[44] *Ibid.*, 1860, p. 325, Sec. 8.

[45] *Ibid.*, 1863-4, p. 213, Sec. 13.

[46] *San Francisco Municipal Reports*, 1859-1860, pp. 62-3.

[47] *Ibid.*, 1865-1866, pp. 124-6.

[48] *Statutes of California*, 1865-6, p. 641.

ATTEMPTS TO EXCLUDE THE CHINESE BY STATE LAWS, 1852-1862.

During this early period of anti-Chinese agitation, the inability of the state to exclude the Chinese was fully established in the courts. Before the question arose in California, the rights of the states and Federal government had been clearly defined in what are known as the "Passenger Cases." These were argued in 1849 by the best legal talent in the country, when every possible aspect of the subject was carefully discussed. It was clearly established in the decision that the power to regulate commerce granted to Congress by the Constitution is an exclusive power, that the transportation of passengers is an act of commerce; and that the states could not tax such traffic; nor exclude foreigners, except in self-defense when they were shown to be diseased, criminal, or paupers.[49]

Apparently the California legislators did not know of this decision or failed to realize its significance, for they made repeated attempts to regulate immigration by state laws. Many undesirable characters came with the rush to the gold fields, and it was feared that the state would be burdened with criminals and paupers, while the care of the homeless sick was already becoming a serious problem. An act was passed in 1852[50] which required that each owner or master of a vessel bringing passengers to California should furnish a bond of $500 for every alien passenger landed, or pay a commutation fee of $5.00 to the state hospital fund. If, in the opinion of the Mayor of San Francisco or the Commissioner of Immigration any passenger, by reason of sickness, insanity, or other disability, was likely to become an immediate public charge, the bond was increased to $1000 or such commutation fee as the Commissioner of Immigration should consider reasonable.

This law does not seem to have come before the State Supreme Court until 1872. In the case of the *People* v. *S. S. Constitution*, on the authority of the Passenger Cases, it was declared unconstitutional. In his concluding argument Justice

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[49] 7 Howard, 282, 391 ff.

[50] *Statutes of California*, 1852, p. 78. Amended *ibid.*, 1853, p. 71.

Crockett said of the measure: "It seeks to apply to emigrants from foreign countries, landing on our shores, onerous conditions not exacted from them at other of our domestic ports, and not imposed upon them by any Act of Congress. The regulation is not local in its nature or character, and, if Congress deemed it wise to do so, could as well be enforced at the port of New York, as at San Francisco. Congress having omitted to establish such regulations, and to impose such burdens on foreign emigrants, the presumption is that it deems it unwise or impolitic to do so."[51]

The senate and assembly passed concurrent resolutions in 1854 instructing the California representatives to procure the passage of an Act of Congress authorizing the imposition of a capitation tax upon natives of China and Japan who emigrated to California, the tax to be paid by owners and masters of vessels before the emigrants landed.[52] Without waiting for any such authority, the tax was levied in the following year. "An Act to discourage the immigration to this State of persons who cannot become citizens thereof" required the master, owner, or consignee of the vessel to pay a tax of $50.00 each for all passengers landed. In case of failure to pay, the tax became a lien on the vessel.[53] The courts promptly declared this law unconstitutional.[54]

Notwithstanding this decision, the legislature passed a stringent exclusion law in 1858. After October, 1858, no Chinese or Mongolian was to be allowed to enter the state. Not only the captain or commander of the vessel, but also those employed on board, and even the passengers, were held responsible for knowingly permitting the landing of the Chinese. The penalty for violation of the act was a fine of $400 to $600, or imprisonment from six months to a year, or both such fine and imprisonment. If landed by accident or shipwreck, the captain of the vessel was exempt from the fine, if he used all due diligence to cause each and all of such Chinese to be immediately re-shipped.[55] While this law remained on the statute books, we are informed by the counsel for the appellant in *Lin Sing* v. *Washburn*, that he had been instructed from the bench that the law had been declared unconstitutional in an unpublished decision.[56]

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[51] *People v. S. S. Constitution*, 42 Cal. 578, 590.

[52] *Statutes of California*, 1854, p. 230.

[53] *Ibid.*, 1855, p. 194.

[54] *People v. Downer*, 7 Cal. 170.

Undeterred by these decisions, the legislature in 1862 added two more laws to its list of unconstitutional measures. The law of 1852 was amended,[57] and, for the further discouragement of Chinese immigration, a police tax of $2.50 per month was levied on all Chinese who were not already paying for licenses. The law allowed the usual harsh methods of enforcement; the collectors being authorized to seize the property of persons refusing to pay, and sell it at one hour's notice to obtain the money to satisfy the tax. Employers of Chinese were responsible for payment of the tax of those whom they hired.[58]

The Supreme Court decision on this law stated even more clearly than in the previous cases the illegality of all such attempts to legislate against the Chinese. The judge pointed out that the act was one of extreme hostility to these people, and that it undertook to prescribe the terms on which they should be allowed to reside in the state. This right, when carried to the extent to which it might be exercised, could be so used as to cut off all intercourse between the Chinese and the people of the state, thus the channels of commerce would be obstructed. The Chinese could not be set aside as special subjects of taxation. If this were possible, a tax might be imposed which no human industry could pay. Commerce includes an intercourse of persons as well as an importation of merchandise, and the states have no power to tax commerce.[59]

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[55] *Statutes of California*, 1858, p. 295.

[56] 20 Cal. 534.

[57] *Statutes of California*, 1862, p. 486.

[58] *Ibid.*, 1862, p. 462.

[59] *Lin Sing* v. *Washburn*, 20 Cal. 534.

THE WORKINGMEN OF THE CITIES TAKE UP THE CAMPAIGN AGAINST THE CHINESE.

Between 1862 and 1868 there was a great decline in the Chinese immigration. This was due not only to hostile legislation and decreasing opportunities for profitable employment in the mines, but also the organized opposition of the workingmen in the cities. As shown in our account of the San Francisco labor movement, this period was one of rapid development of trade-unions and anti-Chinese societies. Anti-coolie clubs, as they were often called, were formed as early as 1862,[60] and in 1866-1867 organizations of this kind were particularly numerous and active, being found in all the wards of San Francisco. The reports of the Custom House show that in 1864, 1866, and 1867, there were more Chinese departures than arrivals.[61] But just at this time, when the workingmen seemed to have fair prospects of success in their efforts to lessen the number of these cheap competitors, new influences combined to increase this objectionable immigration to greater numbers than ever before.

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[60] *Bulletin*, July 12, 1862.

[61] 1864, 1215; 1866, 871; 1867, 205.

CHAPTER IV.

FEDERAL RELATIONS WITH THE CHINESE, 1840-1871

China was opened by force of arms in 1840. Four years later, a "Treaty of Peace, Amity, and Commerce" was concluded, in which it was agreed that certain ports should be open to the citizens of the United States. They were to have the privilege of residing at these ports, and of obtaining sites for the construction of houses, places of business, hospitals, churches and cemeteries. Local authorities were to defend them and their property from all insult and injury. Americans guilty of crimes were to be tried in their own consular courts. Rules were set forth for the regulation of commerce.[1]

A second treaty for the regulation of trade between the two countries, made in 1858, was equally favorable to the United States. Among other provisions was the "most favored nation" clause, which agreed that this country should receive any concessions granted other nations.[2]

THE BURLINGAME TREATY.

The famous Burlingame Treaty was concluded in 1868. In it the mutual assurances of protection and trading privileges were renewed. Both countries undertook to suppress the coolie traffic. The reciprocal enjoyment of the privileges of the educational institutions of the two countries by their respective subjects was allowed. The citizens of either country while residing in the other were to be exempt from persecution on account of their religious faith or worship. The provisions of Article V on the subject of immigration are most significant for our study. To quote from the treaty, "The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantages of free migration and emigration of their citizens and subjects respectively from one country to the other for purposes of curiosity, of trade or of permanent residence." In this free interchange there was but one reservation, which was embodied in an amendment providing that nothing in the treaty should be held to confer the right of naturalization upon the citizens of the United States in China, nor upon the citizens of China in the United States.

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[1] *Treaties and Conventions of the United States*, p. 145, Serial No. 2262.

[2] *Ibid.*, p. 159-168, Art. XXX.

[3] *Ibid.*, p. 181.

This treaty recognizing in such sweeping terms the right of free immigration was concluded at a time when the political parties of California were pledged to the effort to secure Chinese exclusion. We have already noticed the anti-Chinese agitation of organizations of workingmen in 1866-1867. Not only were individual candidates required to express themselves on this question, but the political conventions of both the Union and Democratic parties were induced to adopt strong anti-Chinese planks in their platforms. These declared that the importation of Chinese or any other people of the Mongolian race into the Pacific States or Territories was in every respect injurious and degrading to American labor by forcing it into ruinous competition, and strongly advocated legislative restriction of such immigration.[4] The Democratic delegates to the National Convention of 1868 were instructed to call attention to the question of Chinese immigration and to request that means be recommended to Congress for protecting free industry from this competition.[5] There seems no reason to doubt that this assurance of the privileges of free immigration was given at a time when the majority of the citizens of California were strongly in favor of the exclusion of the Chinese.[6]

EFFECT OF FOURTEENTH AND FIFTEENTH AMENDMENTS.

The Fourteenth and Fifteenth Amendments to the Constitution brought no political rights to the Chinese.[7] The guarantees of the Fourteenth Amendment are for "all persons born or naturalized in the United States," and the Fifteenth Amendment provides that "The rights of *citizens of the United States* to vote shall not be abridged, etc." Senator Sargent testified that in preparing these amendments the word "nativity" and certain other words were struck out of the original draft of the Fifteenth Amendment, for the purpose of making it possible to prohibit the naturalization of the Chinese.[8] The California Senator claimed that he was in conference with the committees of both the Senate and House of Representatives when the amendments were being drafted, and that it was not intended to admit the Chinese to their benefits.

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[4] Davis, *Political Conventions of California*, pp. 249, 265.

[5] *Ibid.*, p. 285.

[6] See Chapter V, note 15.

[7] For the effect of the Fourteenth Amendment in admitting Chinese testimony to the courts see Chapter III, notes 24-5.

The passage of these amendments caused much uneasiness in California, where it was realized that a modification of the naturalization laws would at once make possible the admission of over seventy thousand Chinese to the right of suffrage. The Democratic State Convention passed resolutions in 1869 condemning the Fifteenth Amendment, declaring that it would degrade the right of suffrage to grant it to negroes and Chinamen, and that such a course would result in building up a class of oligarchs, created and maintained by Chinese votes.[9] The Republican Convention of the same year dealt with the question of Chinese immigration in an evasive way, but declared: "We are opposed to Chinese suffrage in any form, and to any change in the naturalization laws of the United States."[10]

Senator Sargent claimed that the amendment to the Burlingame Treaty refusing naturalization to the Chinese was written by Charles Sumner. That this great champion of the rights of the negro had no intention of permanently disqualifying the Chinese for citizenship is evident from his subsequent record. In July, 1867, he introduced a bill to strike out the word "white" from the naturalization law. This bill was never reported from the Judiciary Committee to which it was referred, and he re-introduced it in March, 1869. The measure was finally reported favorably in 1870, just in time for its author to insist on its addition as an amendment to the bill then before Congress for the revision of the naturalization laws.

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[8] *Congressional Globe*, 2d Sess., 41st Cong., p. 4275.

[9] Davis, *Political Conventions of California*, p. 290.

[10] *Ibid.*, p. 293.

FIRST CONGRESSIONAL DEBATE ON THE CHINESE QUESTION.

While the representatives of the Pacific Coast states had made earlier efforts to secure congressional action on the Chinese question, the problems growing out of their presence were fully presented to Congress for the first time in the discussions of this bill for the revision of the naturalization laws. The attempts to amend these laws grew out of the gross frauds in the New York elections of 1868. A number of measures were presented in 1869 and 1870 for the purpose of preventing the wholesale illegal naturalization of foreigners for campaign purposes. The bill of Davis of New York, "to establish a uniform system of naturalization and to regulate the proceedings under the same,"[11] was promptly amended by Fitch of Nevada, who proposed to add the words, "except natives of China and Japan,"[12] to the term "alien." Johnson of California was then trying to put through measures declaring that the Fifteenth Amendment should not apply to the Chinese,[13] and that the states had the right of regulating Chinese immigration.[14] The California and Oregon representatives at once joined the Nevada member in a successful fight against the naturalization bill. Davis had the defeated bill taken from the table and re-committed. He then introduced a new measure which, by merely amending the existing naturalization laws, and punishing crimes against them, left the status of the Chinese unchanged.[15] In this form the bill was sent to the Senate.

The measure was extensively debated and amended in the Senate, and then by unanimous agreement it was arranged to close the debates and vote on the bill at five o'clock on the Saturday evening preceding the Fourth of July. About half an hour before the time agreed upon, Charles Sumner seized the opportunity to force through the amendment embodying his bill which had just been favorably reported from the committee, and which he had been making futile efforts to pass for the preceding three years. His amendment read, "That all Acts of Congress relating to naturalization be, and the same are hereby, amended by striking out the word 'white' wherever it occurs, so that in naturalization there shall be no distinction of race or color."[16]

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[11] *Congressional Globe*, 2d Sess. 41st Cong., pp. 1635, 4266, 4275, 4279, 4284, 4317, 4318.

[12] *Ibid.*, p. 4266.

[13] *Ibid.*, 1st Sess. 41st Cong., p. 202; 2d Sess. 41st Cong., p. 755.

[14] *Ibid.*, 2d Sess. 41st Cong., pp. 338, 752.

[15] *Ibid.*, pp. 4366, 4368, 5441, 5471, 5607.

The Pacific Coast Senators were immediately up in arms. Williams of Oregon at once amended the amendment by the proviso, "But this Act shall not be construed to authorize the naturalization of persons born in the Chinese Empire."[17] Stewart of Nevada declared himself absolved from the agreement to vote without further debate, because the original bill was a police measure which did not extend the right of suffrage. It was evident that no agreement could be reached without long debate. For the first time in the history of the Senate a unanimous agreement was violated. It was decided to hold a session on the Fourth of July, as there were still many important measures to be crowded into the closing days of the session.

The heated debates over the question of whether the Chinese should be admitted to a full share in the benefits commemorated by the great national holiday lasted all day and far into the night. The members who were anxious to secure the measure protecting the purity of elections, or who had other important matters waiting, tried in vain to persuade Sumner to withdraw his amendment until a more opportune time. He declared, "This is the opportune moment. It is the Fourth of July; the very day for the proposition."[18]

Sumner took his stand on the Declaration of Independence,[19] and the doctrines of human equality and brotherhood so freely promulgated at the time of the American and French Revolutions, all of which had been given new force by the Emancipation Proclamation, and the Fourteenth and Fifteenth Amendments. These general principles, so dear to every American, were set over against the very concrete presentation of the difficult race problem of the Pacific Coast. The western Senators emphasized the servile character of the Chinese labor; their total lack of appreciation or understanding of our customs or institutions; their fanatical devotion to their own political and religious system; the impossibility of binding them by any oath; and the control which the Six Companies would exercise over their votes, were all presented. It was pointed out that this amendment would defeat the purpose of the original bill, which was a measure to ensure the purity of elections; the western Senators freely asserting that the Chinese votes, like their labor, would be on the market, and that politicians could contract with the Six Companies for their delivery wherever they were needed to control the elections.[20]

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[16] *Congressional Globe*, 2d Sess. 41st Cong., p. 5121.

[17] *Ibid.*, p. 5121.

[18] *Ibid.*, p. 5152.

[19] *Ibid.*, p. 5155.

Senator Williams of Oregon made a bitter attack on Sumner's devotion to what the Senator regarded as abstract theories. He declared that if this country "ever is destroyed it will be by a blind unreasoning devotion to some abstraction or theory. . . . 'All men,' says the Senator from Massachusetts, 'are created equal, and therefore all men have a right to equal political power in this country,' and when the practical argument is made to him that his doctrine will overwhelm the nation with a tide of ignorance and bigotry and prejudice and hostility to our institutions, he answers, 'No matter as to consequences, no matter as to practical effects; this theory of mine must be maintained and fully vindicated.' "[21]

In the earlier debates in the House,[22] as well as in this argument in the Senate, it was boldly asserted that the people on the Pacific Coast would never permit the Chinese to exercise the suffrage,—that the army and navy were not strong enough to protect them should they attempt to become voters. Senator Stewart maintained that should this measure pass it would be impossible for the friends of the Chinese to protect them during the two years that would intervene before they could become citizens. He declared, "In those two years those who are opposed to them will carry on a constant war against them. You will have to send your army there because every friend of theirs will be out of power. . . . There will be no moral force left among the good, and those who wish to protect them, and every man who is a friend of the Chinaman understands it. . . . I say that during that period he will be maltreated, murdered, exterminated. The result will be that we shall have war during the whole of that time and he never will be allowed to vote."[23] These statements show that even in the period prior to the more active campaign against them, those familiar with conditions on the Pacific Coast were fully aware of the bitter antagonism with which a large class of its inhabitants regarded the Chinese.

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[20] *Congressional Globe*, 2d Sess. 41st Cong., pp. 4834, 5174, 5148, 5168.

[21] *Ibid.*, p. 5157.

[22] *Ibid.*, p. 756.

In presenting his amendment, Sumner had spoken of the fact that there were negroes born in Africa or in the West Indies who were deprived of naturalization by the existing laws. With some inconsistency, the Senate refused to pass his original measure, but gave its sanction to an amendment extending the naturalization laws to aliens of African descent and to persons of African nativity. When in order to test the feeling on the question Senator Trumbull proposed the additional clause, "or persons born in the Chinese Empire," the Senate, which had just agreed to confer citizenship on negroes fresh from the wilds of Africa, refused the same privileges to persons from this oldest of our civilized nations by a vote of nine to thirty-one.[24]

Undoubtedly the results of this first presentation of the Chinese question in Congress were far-reaching. Had they acquired the franchise, the Chinese would have been able to wield a greater influence in the politics of the Pacific Coast states than the negro has had in the South. They would certainly have constituted a greater menace, because they combined less sympathy and understanding of our institutions with greater intelligence, abler leadership, and higher powers of organization for concerted action in the promotion of their interests. While it is open to question whether the people of the Pacific Coast states would have permitted them to exercise political rights, yet had the Chinese been given an opportunity to acquire citizenship, they would undoubtedly have been much better able to protect themselves from the attacks of the next ten years, and the outcome might have been different. But in this first instance when the Chinese issue was fully presented to the law-makers of the nation, these people were branded as permanent aliens who should never be admitted to membership in the body politic, and thus the way was paved for their complete exclusion.

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[23] *Congressional Globe*, 2d Sess. 41st Cong., p. 5173.

[24] *Ibid.*, p. 5177.

CHAPTER V.

CALIFORNIA LEGISLATION FOR THE EXCLUSION AND REGULATION OF THE CHINESE, 1867-1880.

An important turning-point in the Chinese situation in California came in the period between 1867 and 1870. We have seen that there was an actual decline in the number of Chinese in 1866 to 1867, but in the succeeding three years they arrived in greater numbers than at any time since 1854.[1] While the Burlingame Treaty may have helped to stimulate immigration, the change was chiefly due to the increased opportunities for employment afforded by the building of the overland railroad, and the development of industries where their labor could be utilized. Probably no contemporary writer was better qualified to estimate the significance of these changes than Henry George. As a member of the Typographical Union, he had opportunities to familiarize himself with the point of view of the workingmen, and his later experiences as a newspaper writer enabled him to learn the other aspects of the question. The first full presentation of the great race problem of the Pacific Coast to the eastern public was made in his article published in the New York *Tribune* of May 1, 1869. In this article conditions in California are summed up as follows: "There is now more reason for an anti-Chinese feeling in California than at any other time; and that feeling, though less general, may be more intense but it is certainly not as powerful as it has been, and it is doubtful if it could at present secure the prohibition of Chinese immigration, even were there no constitutional obstacles in the way; though should such an issue come fairly before the people, the prohibitionists would have a clear majority. There are too many interests becoming involved in the employment of

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[1] The arrivals at the San Francisco Customs House during these years were as follows: 1866, 2,242; 1867, 4,794; 11,085; 1869, 14,994; 1870, 10,869. House Report No. 2915, p. 17, 51st Cong., 1st Sess., Serial No. 2815.

Chinese labor to make this feasible, unless by some sudden awakening to the danger, the working classes should be led to such thorough union as to make numbers count more than capital."[3]

Accepting this point of view, we may regard the anti-Chinese movements of the seventies as the process by which the working people of California became fully aroused to their danger, and achieved a degree of organization which not only enabled them to enlist the full influence of the Pacific Coast states, but also the active co-operation of trade-unionists all over the United States, in their efforts to force congressional action for Chinese exclusion. While, as we have seen, the working people of California had been opposed to the Chinese since their first arrival in large numbers in 1852, the gathering of thousands of unemployed white men in San Francisco during the seventies gave new force and bitterness to this antagonism.

The economic depression following the Civil War was, on the whole, less severely felt in California than in other sections of the country. Though a labor exchange was established in 1868 to assist in finding work for the unemployed, labor conditions did not become very bad until 1870. This crisis was largely due to the completion and opening of the transcontinental railroad in 1869. About ten thousand Chinese and between two and three thousand white men had been employed in building this road. This great mass of labor was turned back to compete in other occupations. At the same time better facilities brought a tide of immigration of those who in many cases fled from bad conditions in the older states only to join the ranks of the unemployed in San Francisco. The opening of the railroad also brought greater competition to the employers of the Pacific Coast. We have seen that the trade-unions were strongly organized in the later sixties, and were determined to maintain the high wages and short hours which they had obtained during the previous peculiarly favorable period. Discouraged by the difficulties of the coming economic depression and by the frequent strikes of their employees, those engaged in manufacturing enterprises were disposed to resort to the cheap and docile Chinese labor or to abandon the fight with adverse conditions.[3] The unemployed of the whole state gathered in San Francisco, and soon began the first of the many turbulent labor demonstrations that were characteristic of the seventies. Of course the hardships of this period were common to all parts of the United States, and were the results of complex and far-reaching economic conditions, but the working people of California were disposed to lay a large share of their troubles at the door of "John Chinaman."

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[3] The article was reprinted in *The Chinese Invasion*, compiled by H. J. West, and published in San Francisco in 1873.

ANTI-CHINESE MOVEMENTS OF THE EARLY SEVENTIES.

The sand-lot meetings of the unemployed began in the early part of 1870,[4] and were soon followed by a great anti-Chinese demonstration.[5] The Knights of St. Crispin, an organization of the shoemakers who were among the chief sufferers from Chinese competition, led this movement. There was a great procession of members of labor organizations, who carried transparencies displaying their protests against Chinese labor in such phrases as, "Woman's Rights and no More Chinese Chambermaids," "No Servile Labor Shall Pollute Our Land," "We Want no Slaves or Aristocrats," "The Coolie Labor System Leaves us no Alternative—Starvation or Disgrace," "Mark the Man who would Crush us to the Level of the Mongolian Slave—We All Vote." Among the speakers at the great mass meeting of about three thousand persons were P. A. Roach, Henry George, and A. M. Winn. Resolutions were adopted declaring that the employment of Chinese in the boot and shoe business, and in other trades, had already reduced the wages of such trades fifty per cent., and thereby driven out of employment many white laborers. It was pointed out that, notwithstanding the protests of the working people, no attempts were being made to put a stop to the immigration, but that, on the contrary, the very means of the people were being used to encourage the importation of Chinese by paying large subsidies to the steamers that brought them. It had become a national question, as the workmen in the eastern states were already threatened with the same competition. They announced that they were determined to prevent by any and all means in their power what they characterized as "this cruel and monstrous competition that is now driving us and our families to starvation." They called upon their fellow-workmen throughout the United States to stand with them in the common danger, and to make of it a question on which there should be no equivocation or subterfuge. They demanded that the subsidy paid the Pacific steamers be stopped, and insisted on the abrogation of the treaty with China, and the prohibition of Chinese immigration, except for commercial purposes.[6] Before the meeting adjourned it was decided to request the Mechanics' State Council to present a plan for a state anti-Chinese convention.

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[3] *Alta*, July 22, 1867. *Bulletin*, May 19, 1870.

[4] *Alta* and *Bulletin*, March 22, 23, 29, 30, 31, 1870; April 1, 5, 6, 7, 9, 10; May 6, 13, 31, 1870.

[5] *Ibid.*, July 9, 1870.

At the next meeting a week later it was announced that the Crispins had formed anti-coolie associations in four wards of the city, and that many trade-unions had re-organized on an anti-Chinese basis. The Mechanics' State Council had also met and submitted a plan for the "Anti-Chinese Convention of the State of California." This provided that the convention should be composed of delegates from organized trade and labor associations, and that its object should be opposition to Chinese immigration, and the cultivation of public opinion for the abrogation of the treaty with China. All partisan politics were to be debarred from the discussions.[7] In addition to adopting these plans for the state convention, this meeting requested the Six Companies to inform the Emperor of China that it was unsafe for any more Chinese to come here. Judging by the great decrease in the number of arrivals in 1871,[8] this warning must have been given. Apparently the suggestion that the supervisors and other city officials who failed to co-operate with them "must be hurled into oblivion" was also acted upon; at least there was no lack of zeal on the part of these servants of the people in succeeding years.

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[6] *Alta* and *Bulletin*, July 9, 1870. A statement was also prepared and submitted to the San Francisco Board of Health by the Anti-Coolie Association July 5, 1870. See *Congressional Globe*, 3d Sess. 41st Cong., p. 356.

[7] *Alta* and *Bulletin*, July 16, 1870.

[8] The Custom House Reports show 1870, 10,869; 1871, 5,542.

The Anti-Chinese State Convention which met a month later was significant, first, because it was a step towards the unification of the California movement against the Chinese; second, because a political labor movement was started which lasted over ten years; third, because at this meeting we have evidence of the beginning of the coöperation of the eastern labor organizations in the efforts to secure anti-Chinese legislation. The convention call had been issued under a constitution which debarred political activities, but immediately on assembling the members proceeded to develop their own policy. While recognizing that it was impossible by arbitrary rules to fix the price of labor, they declared that the conditions of labor should be regulated by the laws of the nation. They therefore urged the legal establishment of the eight-hour day, and legislation that would prevent competition with the labor from a country with a civilization differing from our own. They opposed the election of any one who employed Chinese or encouraged their employment or introduction among us. It was also proposed to organize as a permanent labor party, and an executive committee was appointed to nominate a full municipal ticket. This latter action caused a split in the convention; those who were opposed to all separate political action withdrew and formed another organization.[9]

The eastern labor organizations were now becoming aware of the possible menace of Chinese labor. This was not alone due to the efforts of the Californians to secure a sympathetic understanding of the race problems of the Pacific Coast. The question was brought home with greater force by the actual introduction of Chinese as strike-breakers in Massachusetts. Efforts had been made in 1868 to 1870 to organize an extensive business of supplying Chinese contract laborers for employment in eastern states.[10] While a few hundred of these laborers were ordered for work in the South, the plan failed for lack of support. The displacing of white labor in a Massachusetts factory by some ninety-five Chinese called forth a vigorous protest. The Massachusetts Labor Reform party and the Democratic party conventions of 1870 passed resolutions denouncing such a policy in terms sufficiently strong to have satisfied a Californian. To quote from the resolution of the Labor Reform party, " . . . We are inflexibly opposed to the importation by capitalists of laborers from China and elsewhere for the purpose of degrading and cheapening American labor, and will resist it by all legal and constitutional means in our power."[11] The western Senators found a colleague in the Massachusetts member who declared, "I think the time has come when we should have some action upon this subject, for it does seem to me at the present day that there is a conspiracy of capital in this country to cast a drag-net over creation for the purpose of bringing degraded labor here to lower and degrade our laboring men."

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[9] *Alta*, August 12, 17, 20, 24, 1870. See p. 23.

[10] This was organized by a man named Koopmanschap. He expected the southern planters to welcome this substitute for the negro labor.

The Mechanics' State Council sent M. W. Delaney as a delegate to the 1870 meeting of the National Labor Congress at Chicago. A letter from him read at the Anti-Chinese Convention gave a glowing account of the progress of the anti-Chinese movement in this congress.[12] In the November meeting of the council we find further evidence of this eastern co-operation. Among the resolutions adopted was one which ran: "Resolved, That we rejoice in the fact that laboring men of the Eastern States have taken steps to agitate opposition to the immigration of Chinese laborers, and send greetings and a copy of these anti-Chinese resolutions to Wm. J. Jessup, President of the Workingmen's Association of New York, and to the United Mechanics of New Jersey and other States where they are organized."[13] Since the congressional action necessary for the exclusion of the Chinese could not be obtained without support from other sections of the Union, the enlistment of the active assistance of the rapidly developing labor organizations of the eastern states was an important step towards the securing of exclusion legislation.

Although weakened by the division in their ranks, both factions of the Anti-Chinese State Convention continued their efforts to discourage Chinese immigration and to promote exclusion. The Anti-Chinese State Central Committee met in September, organized, and called upon the trade-unions to amend their constitutions by striking out the clauses that forbade their entering into political movements. The chairman of the committee was instructed to call meetings in each precinct of San Francisco for the purpose of organizing associations composed of workingmen. A committee was appointed to draw up a constitution for the government of anti-coolie associations throughout the state.[14] This faction under the name of the National Labor Party was also active in politics.

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[11] *Congressional Record*, XV, p. 3776.

[12] *Alta*, August 24, 1870.

[13] *Bulletin*, November 10, 1870.

The seceding faction of the convention under the leadership of A. M. Winn organized under the name of "Industrial Reformers," and continued their labors against the Chinese.

The results of these efforts were soon apparent, as the immigration of the Chinese declined fifty per cent. in 1871. Governor Haight's failure to secure re-election in September, 1871, was also attributed largely to the fact that he had made himself very unpopular with the workingmen by his cordial reception of the Burlingame party, and friendliness to their mission.[15]

The Chinese influx was renewed in 1873 at a higher rate than ever before; the Custom House reports show that seventeen thousand arrived during that year.[16] Labor conditions in the state continued bad; hundreds were still out of employment and glad to find work at any wage. Early in the year another combination of labor organizations was formed for the purpose of checking this overwhelming flood of cheap labor. On May 29, delegates from the Workingmen's Alliance of Sacramento, the Anti-Chinese League of San Francisco, and the Industrial Reformers, met to form the Peoples' Protective Alliance, an anti-Chinese organization aiming to embrace the whole Pacific Coast in its activities. There were to be primary associations, the officers of which would form county assemblies. The central council was to be composed of the presidents of the county assemblies, the grand council of the Industrial Reformers, and certain representative citizens. A general convention was to be held in San Francisco each year. The only condition of membership was the signing of the following pledge: "We pledge our sacred honor that we will not vote for any candidate for office who is not at the time opposed to the immigration of the Chinese, or any other class of servile labor; and that we will use our personal influence to prevent the further influx of Mongolians."[17] The resolutions adopted by the new alliance stated that while opposed to the further immigration of men and women from China, its members were equally opposed to any mis-treatment of those already in the state. They declared that petitioning Congress was the only way to remedy the evil, and called upon all citizens to sign the petitions and contribute to the expenses of the campaign. Officers were elected and plans made to extend the organization to the other cities of the Coast.

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[14] *Alta*, September 16, 1870.

[15] Jones of Nevada in his speech before Congress attributes the defeat of Haight entirely to the fact that he had presided over the dinner to Burlingame and his party, and had spoken favorably of the treaty. In reality there were other factors that made possible the success of Newton Booth in 1871. (*Congressional Record*, XIII, p. 1670.) For the vote at the election of 1871, see Davis, *Political Conventions of California*, p. 311.

[16] *Congressional Record*, XIII, p. 1518. H. R. Rept. No. 2915, p. 17, 51st Cong., 1st Sess., Serial No. 2815.

At the next meeting a somewhat revolutionary response from Portland, Oregon, was received with great applause. The letter declared that, should Congress refuse relief, "revolution,—yes, riot and bloodshed will follow all along the Pacific Coast. The American workman will never permit the heritage of their fathers to fall from their grasp."[18] Twenty-six thousand signatures were soon obtained to the petition to congress. M. B. Starr was appointed grand lecturer, and money was raised to defray his expenses while lecturing through the state and Oregon.[19] The executive committee lost no time in organizing primary associations in the different wards of San Francisco.

These efforts of the organizations of workingmen succeeded in thoroughly arousing the people of the state. Citizens of all classes signed the great petitions to Congress and joined in the mass meetings of protest against the ever-increasing tide of Oriental laborers. All political parties and the municipal and state authorities were now fully enlisted in the efforts to secure exclusion laws, and, in their absence, to devise ways of discouraging the alarming increase of these unwelcome immigrants.

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[17] *Alta*, May 29 and 30, 1873.

[18] *Ibid.*, June 6, 1873.

[19] *Ibid.*, June 12, 1873.

SAN FRANCISCO ORDINANCES REGULATING THE CHINESE.

The only means for the discouragement of the Chinese immigration open to the people of the Pacific Coast were the withdrawal of employment and opportunities for making money, and frightening away by a process of intimidation and persecution. Both the municipal and state authorities now resorted to these methods of dealing with the difficult problem.

In December of 1869 the committee of the Anti-Coolie Association appointed to investigate the conditions and habits of the Chinese residents of the city reported the extremely overcrowded and filthy conditions in Chinatown.[29] The recent peculiarly virulent epidemic of smallpox was attributed to their presence. The Board of Health had also frequently reported on the filth and disease found in their quarters. We have already noticed the great anti-Chinese demonstrations of July and August, 1870, during which the city authorities were charged with a lack of zeal in the cause. In response to this popular clamor, the San Francisco supervisors passed the lodging-house or cubic-air ordinance on July 29, 1870. This made it a misdemeanor for a landlord to lodge any person in a room where there was less than five hundred cubic feet of air for each person, and also held the lodger equally responsible for occupying quarters where he was not supplied with the requisite amount of air. The penalties were a fine of from ten to five hundred dollars, or imprisonment for not less than five days or more than three months.

Had this ordinance been effectually and impartially administered, it might have proved highly beneficial to the whites as well as to the Chinese. From early days, San Francisco has had a large transient population, and the numerous cheap lodging-houses have often failed to make so generous a provision for fresh air as this law required. But the white lodgers have been allowed to breathe foul air without molestation, and the ordinance was never enforced in Chinatown with any degree of consistency or regularity. In response to some new popular clamor against the Chinese, or by way of furnishing a little extra work for the Police Department, occasional raids were made on the Chinese quarters. The victims rarely paid the fines, preferring to lodge with the city for the prescribed time. The jails were soon crowded to an extent which, as was frequently pointed out by the friends of the Chinese, rendered the city guilty of gross violation of its own ordinance.

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[29] *Alta*, December 6, 1869.

Two other anti-Chinese ordinances were passed by the San Francisco supervisors in 1870. One prohibited the employment of the Chinese on the public works, and the other made it a misdemeanor for any person on the sidewalks to carry baskets suspended on poles across the shoulders.[21] After several Chinese had been arrested and compelled to pay fines for the violation of this latter ordinance, its validity was thoroughly tested in the courts. A demurrer was sustained in the police court, but on appeal to the county court the decision was reversed. The case was then carried to the supreme court on a writ of habeas corpus. Judge McKinstry decided that the carrying on the sidewalk of baskets attached to poles upon the shoulders may be regarded as a nuisance, or an obstruction, or a practice dangerous to the public safety, and that as such the supervisors had authority to enact an ordinance prohibiting it, and that the violation of an ordinance of the supervisors constituted a misdemeanor.[22]

When early in 1873 the number of Chinese arriving in San Francisco increased to two thousand a month, the supervisors were aroused to renewed exertions to devise means for preventing or decreasing the immigration. They sent a protest to Congress, and discussed a plan for the extensive circulation of a pledge for securing a rigid boycott of Chinese labor and all its products. As the new arrivals were herded like cattle in the already overcrowded quarters of Chinatown, the police commenced making arrests for the violation of the cubic-air ordinance. The papers reported twenty-five arrests on May 23, and fifty more two days later.[23] But, as the Chinese never paid the fines, the enforcement of this ordinance was limited to the capacity of the jails. Probably they realized that the payment of the fines would simply have invited an extensive enforcement of the law.

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[21] Passed in December, 1870.

[22] *People v. Ex parte Ashbury, Alta, February 5, 1871.*

The barbarous queue ordinance was proposed for the purpose of forcing the payment of the fines, rather than serving the term in jail. Supervisor Goodwin, who was the author of this, as well as of the manifestly unjust laundry-license ordinance, justified them by declaring that the general government had so tied their hands by the treaty with China that they must depend on local legislation to discourage the excessive immigration which was now causing so much alarm.[24] It was well known that no greater punishment could be inflicted on a Chinaman than the loss of his queue, as its absence degraded him in the eyes of his fellows. The proposed ordinance directed that the hair of every male prisoner in the county jail should be cut to within an inch of his scalp. The supervisors passed this and also the laundry ordinance, which provided that laundries employing one vehicle drawn by animal power should pay two dollars per quarter license fees, those with two such vehicles were charged four dollars, while the laundries with no such vehicles were to pay fifteen dollars per quarter.[25]

Mayor Alvord, not being carried away by the popular excitement, promptly vetoed both ordinances. In his veto message he set forth the history of the treaty relations between the United States and China, and pointed out that the national faith was pledged to firm, lasting, and sincere friendship with the Chinese Empire; we had promised that the people of the United States should not for any trifling cause insult or oppress the people of China, and covenanted to exempt Chinese subjects in the United States from all disability or persecution on account of their religious faith. He declared that the supervisors had no authority to pass such an ordinance, as the Consolidation Act which provided what penalties they could inflict did not allow unusual ones. The Mayor's message brought the more fair-minded members of the Board of Supervisors to their senses and the attempt to pass the measure over his veto failed.[26] The better class of citizens in San Francisco and the interior press commended Mayor Alvord's action in the matter of the queue ordinance.

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[23] *Alta* and *Bulletin*, May 23 and 25, 1873.

[24] *Alta*, May 27, 1873.

[25] Passed June 2, 1873.

As to the laundry ordinance, the Mayor pointed out the evident injustice of its terms, and declared that it would work great hardship to poor women and others who delivered their own work. Though the first attempt to pass this ordinance over the Mayor's veto was unsuccessful, it was finally passed.

The police continued to enforce the cubic-air ordinance in a desultory manner,—chiefly during the periods of public demonstrations against the Chinese. One hundred and fifty-two arrests were made in July, 1873, and ninety-five more in the following August. There followed a long period when the city authorities do not appear to have been exercised about the ventilation of the sleeping quarters of the Chinese. This cessation of arrests may have been due to doubts as to the validity of the ordinance, for in September, 1873, the Chinese proprietor of the Globe Hotel, who had been fined $500 for violating the ordinance, appealed his case to the county court, and won a favorable decision.[27] With the passage of the state law repeating the San Francisco ordinance,[28] and the arousing of the public by the great anti-Chinese demonstrations of 1876, there was a renewal of interest in this subject. In April, May, and June of that year there were 518 arrests.[29]

STATE ANTI-CHINESE LEGISLATION, 1870-1876.

Although it had been clearly established by the earlier decisions that the state could not exclude or tax the Chinese immigrants, two laws were passed in 1870 which ostensibly aimed to exclude lewd women and other criminals, but which were so sweeping in their terms as to constitute an obstacle to immigration.[30] These laws were later embodied in sections 174 and 175 of the criminal code. Section 175 reads, "Every person bringing in or landing within this State any person born either in the Empire of China or in Japan, or in the Islands adjacent to the Empire of China, without first presenting to the Commissioner of Immigration evidence satisfactory to such Commissioner that such person desires voluntarily to come into this State and is a person of good character, and obtaining from such Commissioner a permit describing such person and authorizing the landing, is punishable by a fine of not less than one or more than five thousand dollars, or by imprisonment in the county jail of not less than two or more than twelve months." Section 175 provided that for each individual brought to or landed within the state in violation of the law, the guilty parties should be liable to a separate penalty.

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[26] *Alta*, June 24, 1873.

[27] *Bulletin*, September 9, 1873.

[28] *Statutes of California*, 1876, p. 759.

[29] Brooks, *Brief on the Legislation and Adjudication Touching the Chinese*, San Francisco, 1877.

The constitutionality of this law which, it was claimed, was intended chiefly for the exclusion of lewd women, was fully tested in 1874 and 1876. The Supreme Court of the state sustained the law, but on appeal to the Federal court the decision was reversed. Justice Field declared that "a statute thus sweeping in its terms, confounding by general designation persons widely variant in character," was not entitled to any very high consideration.[31] He pointed out that the extent of the power of the state to exclude foreigners from its territory is limited by the right in which it had its origin, the right of self-defense; whatever outside of the legitimate exercise of this right affects the intercourse of our people with foreigners, their emigration to this country and residence therein, is exclusively within the jurisdiction of the general government, and is not subject to state control or interference. The remedy for the evil should be sought in a more vigorous enforcement of municipal laws.[32] This opinion was confirmed in the case of *Chy Lung* v. *Freeman* in the United States Supreme Court.[33] The report of the decision caused much bitter feeling in San Francisco, and helped to arouse the people for the great anti-Chinese demonstrations that immediately followed its publication in 1876.

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[30] *Statutes of California*, 1870, pp. 330-332.

[31] Brooks, *Brief on the Legislation and Adjudication Touching the Chinese*, p. 39.

[32] In the matter of Ah Fong, *Opinions and Papers of S. J. Field*, Vol. 11, No. 28.

Both the 1872[34] and 1874[35] sessions of the legislature passed resolutions calling upon the California Senators and Representatives in Congress to do all in their power to secure treaty amendments that would permit measures for discouraging Chinese immigration. In endorsing the bill introduced by Representative Page for prohibiting the employment of coolie labor under contract, the concurrent resolutions announced that the California legislators would "cordially co-operate with our congressional delegation in the passage of any constitutional measure that will tend to relieve us of this class of people, and prevent their future immigration to our shores."[36] That there was no lack of disposition to seize any possible opportunity for such legislation is shown by the insertion of a section in the act creating the West Side Irrigation District, which stipulated that "No Chinese labor shall be employed in the construction of any canal or ditch provided for in this Act."[37]

By this time it was well understood that no one could hope to obtain any office in the gift of the people unless he displayed appropriate zeal in the cause which was now fully recognized in all the political platforms. Not only the Independent party,[38] but also the older political parties passed resolutions pledging their support to anti-Chinese measures. The Democrats and Republicans quarreled over questions of priority and zeal in the cause.[39] The National Labor party continued its activities, and the various other workingmen's organizations, such as the Mechanics' State Council, the Peoples' Protective Alliance, the United Mechanics, and the Sovereigns of Industry, all found the menace of cheap Asiatic labor the chief reason for their existence. By 1876 the workingmen of the state were united in different organizations to an extent that would have been impossible but for the need of vigorous action for defense from a common peril. While these organizations were often short-lived, yet they helped to make possible the successes of the Workingmen's Party, and no doubt prepared their members for participation in the more effective labor movements of later years.

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[33] *Chy Lung v. Freeman et al*, 92 U. S. 275.

[34] *Statutes of California*, 1871-2, p. 970.

[35] *Ibid.*, 1873-4, p. 979.

[36] *Ibid.*, 1873-4, p. 965.

[37] *Ibid.*, 1875-6, p. 747, Sec. 46.

[38] Davis, *Political Conventions of California*, p. 334.

[39] *Ibid.*, pp. 299-300, 307-308, 334, 357, 379.

SAN FRANCISCO ANTI-CHINESE DEMONSTRATIONS OF 1876.

The flood of Chinese immigration reached high-water mark in 1876, when the officials reported 22,943 arrivals.[40] The state and municipal authorities, as well as the various voluntary associations, all united in the largest anti-Chinese demonstration that had yet taken place. The Mayor suggested the appointment of a special committee which was to devote itself to the Chinese problem. Acting on this recommendation the supervisors appointed a committee of twelve, one from each ward of the city. They went to work energetically, and soon procured the passage of a measure authorizing the city to expend $5,000 in sending commissioners to Washington. The committee also decided to call a great mass meeting of citizens. The activities of the anti-coolie clubs were at once renewed, and it was feared that their somewhat excitable oratory might lead to violence. Unusual precautions were taken to prevent an outbreak on the night of the great mass meeting. This was the largest gathering that had thus far been witnessed in the state; it was claimed that twenty-five thousand people assembled to listen to the speeches and to express their sympathy with the movement.[41]

The state legislature also appointed a committee to take evidence on the subject of the Chinese. This committee commenced its work in San Francisco a few days after the great anti-Chinese meeting; when one considers the state of public opinion at this time, and the avowed purpose of the investigation, it is evident that little testimony favorable to the Chinese would be presented. When completed this report set forth in the most convincing way the manifold evils charged to the presence of the Chinese. The revolting facts connected with the unsanitary conditions in Chinatown, and the unspeakable horrors of Chinese prostitution, as well as the economic evils of their cheap labor, were elaborated upon by the various witnesses. Twenty thousand copies of this report were ordered printed for distribution throughout the United States.

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[40] *Congressional Record,* XIII, p. 1518.

[41] *Alta, Bulletin,* and other San Francisco papers, April 6, 1876.

The San Francisco municipal authorities were evidently willing to exercise to the utmost their limited powers of legislation on the subject. The supervisors even used their authority to grant licenses for steam boilers as a means of promoting the employment of white labor. The proprietors of a large shirt factory which would employ four hundred people were granted a boiler permit on condition that they employ not more than one hundred and fifty Chinese, and agree to reduce this number every three months until their entire force was white.[42] The laundry-license ordinance had been declared invalid by the County Court, on the ground that it was unequal in its operation and dealt in odious and unjust discriminations.[43] Since the state law had given new force to the cubic-air ordinance, frequent raids had been made on the crowded quarters of Chinatown. The fine was increased from ten to forty dollars. The difficulty of the lack of jail accommodations again arose, and once more the supervisors passed the objectionable queue ordinance.[44] Mayor Bryant does not seem to have possessed the scruples or the courage of Mayor Alvord, as he signed the ordinance without a protest. The ordinance remained in force until July, 1879, when it was declared unconstitutional in the United States District Court.[45]

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[42] *Bulletin*, July 12, 1875.

[43] *People* v. *Soon Kung*, decided July 9, 1874. See also *Alta*, May 3, 1876.

[44] Brooks, *Brief on the Legislation, etc.*, p. 85; San Francisco Ordinance No. 1294, June 14, 1876.

[45] *Ho Ah Kow* v. *Matthew Nunan*, 5 Sawyer 552.

THE WORKINGMEN'S PARTY AND THE CHINESE.

Henry George who, through his connection with San Francisco papers during this period, had unusual opportunities for estimating public opinion, wrote in 1880, "The feeling on the Chinese question has long been so strong in California as to give certain victory to any party that could fully utilize it. But the difficulty in the way of making political capital of this feeling has been to get resistance, since all parties are willing to take the strongest anti-Chinese ground."[46] Evidently this remark was, in part at least, retrospective, for the successes of the Workingmen's Party in 1877 and 1878 were largely due to its ability to convince the public of its sincerity and zeal in this cause. Kearney is said to have concluded every speech with the emphatic declaration, "The Chinese must go!" and the campaign literature was usually headed with this slogan of the party. In another chapter we have given the history of the rise of this party, and of its successes in electing members to the constitutional convention, so we will pass at once to a consideration of the efforts of this convention to find ways of dealing with the Chinese question.

THE CHINESE QUESTION IN THE CONSTITUTIONAL CONVENTION OF 1879.

We have seen that the California legislators had been trying to find some way of controlling Asiatic immigration since 1852, and that for ten years prior to the meeting of the constitutional convention of 1879 the representatives of all political parties had been eager to meet the demand for this class of legislation. Everything that the state had any power to do had been done, yet practically all the members of the convention were elected under pledges which obligated them to find new remedies for the evil. The people of the state were making what was practically a unanimous demand for the passage of laws which the courts had repeatedly declared that the state had no power to enact. No body of legislators were ever confronted with a more impossible task.

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[46] *Popular Science Monthly*, Vol. 17, p. 433.

It will hardly be profitable to attempt any exhaustive study of the innumerable anti-Chinese measures which were presented in the efforts to discharge these obligations. Many of them were very crude, and the majority, if not actually unconstitutional, were at variance with American traditions. The committee to whom the proposed measures were referred found themselves unable to agree, and so brought in a report which included all the suggestions that seemed likely to reach the desired results, with the understanding that individual members of the committee were not obliged to support the entire report on the floor of the convention. The report of the committee was taken up by sections, and apparently nearly every member of the convention contributed to the lengthy debates. With the exception of C. V. Stuart, of Sonoma, no one attempted a defense of the Chinese. The following methods of dealing with the great race problem of the state were embodied in the report of the committee or suggested in the debates on its recommendations:

1. An appeal to the general government for an abrogation of the Burlingame Treaty, and the passage of exclusion laws.

2. The exclusion of certain classes by the exercise of the police power of the state.

3. Exclusion by a process of "starvation by constitutional provision," or the refusal of all employment and opportunity to earn a living.

4. Exclusion by taxation and the withdrawal of civil rights.

5. The state to prevent the settlement of the Chinese within its bounds by absolute prohibition, or by some system of local option.

As was repeatedly pointed out by the many able lawyers in the convention, the first method was the only one to which no constitutional objections could be offered. But there were few members who had any hope of obtaining relief in this way. The indifference of Congress to the needs of the Pacific Coast was repeatedly commented on, and some of the Workingmen's delegates were ready with bitter charges of the undue influence of the wealthy commercial interests in the halls of Congress.[47] It was difficult for Van Dyke to hold the floor for his temperate presentation of the fact that there were clear lines of both Federal and state decisions which established the controlling power of the general government. He said he realized fully that republican institutions could not survive a continued immigration of this character, but claimed that there were indications that the people of the East were coming to an understanding of the evils of Chinese immigration, and that there was evidence of a decided change of sentiment in Congress. He thought the more radical measures would weaken our position before the country; this was a matter which concerned a great nation, and would be righted by the nation in due time.[48]

Every one was willing to make another appeal to Congress, and so a memorial was prepared which set forth that, "As became a people devoted to the National Union, and filled with profound reverence for law, we have repeatedly, by petition and memorial, through the action of our Legislature, and by our Senators and Representatives in Congress, sought the appropriate remedies against this great wrong, and patiently awaited with confidence the action of the General Government. Meanwhile this giant evil has grown, and strengthened, and expanded; its baneful effects upon the material interests of the people, upon public morals, and our civilization, becoming more and more apparent, until patience is almost exhausted, and the spirit of discontent pervades the State. It would be disingenuous in us to attempt to conceal our amazement at the long delay of appropriate action by the National Government towards the prohibition of an immigration which is rapidly approaching the character of an Oriental invasion, and which threatens to supplant Anglo-Saxon civilization on this Coast."[49] The memorial also presented some of the reasons for the almost universal hostility to the Chinese on the part of the people of the state. The convention had communications sent to the governors of

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[47] *Debates and Proceedings*, etc., Barton, pp. 653-4; Barnes, p. 687; Kleine, p. 648; Barbour, p. 651.

[48] *Ibid.*, pp. 695-6.

[49] *Ibid.*, p. 739.

Oregon, Washington, and Arizona, requesting that they also memorialize the President of the United States and the Senate for a modification of the Burlingame Treaty.[50]

The right of the states, by virtue of their police power, to pass laws for the protection of the public from the criminal and diseased had been fully recognized in the various decisions. In the first section of the proposed article of the constitution presented by the committee, it was intended to make an extensive use of this right. This section read, "The legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State."[51] It is obvious that the last class enumerated might be construed to include all the Chinese in the state. Gen. Miller, the chairman of the committee, claimed that as many as five thousand Chinese could be sent away each year by such provisions. He suggested that they be collected in San Francisco, and then returned to China, or sent to the eastern states as an object lesson showing the evils complained of in California.[52] This section was generally accepted by the convention, and was adopted as a part of the constitution.

The measures restricting the employment of the Chinese applied to the public, to corporations, and to individuals.

No one questioned the passage of the section providing that "No Chinese shall be employed on any state, county, municipal, or other public works, except in punishment of crime."[53] It was pointed out that the state had the same right as an individual to employ such persons as suited its purposes.

The right to prohibit the employment of the Chinese by corporations was more open to debate. It was argued that since corporations are created by the state, and since the right is reserved to amend or alter their charters, the legislature could specify the conditions under which they were permitted to do business in the state.[54] Not all of the members were convinced of the wisdom of such a prohibition. Overton bluntly declared that it was not worth the paper on which it was written, claiming that under the "most favored nation" clause of the treaty, the Chinese were privileged to seek the employment open to immigrants from other countries. However, the measure was finally adopted in preference to any of the substitutes offered during the debate.[55]

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[50] *Debates and Proceedings, etc.*, p. 708-9.

[51] *Ibid.*, p. 627.

[52] *Ibid.*, pp. 628-630.

[53] Constitution of California, Art. XIX, Sec. 3.

Among the most radical remedies proposed in the convention were those which undertook to prevent all employment of the Chinese by the people of the state.[56] Miller, in presenting this part of the report, characterized it as "starvation by constitutional enactment," and did not hesitate to express his strong disapprobation of any such measure, saying, "If the Chinese are not to be employed by anybody, are not permitted to labor, they cannot live, and if you deprive them of the right to labor they must starve. That is the logical sequence of the position assumed by the advocates of this prohibition against the labor of these people. It is indefensible, for it deprives the prohibited people of the right of life." He declared that such a plan was against the spirit of the age, and the laws of all civilized nations, and that it also struck at the liberties of the citizens of the United States, as by it their right to choose freely such labor as they wished to employ was abridged.[57]

Another plan for depriving the Chinese of opportunities to work was that of the amendment to the section on employment by corporations, offered by Beerstecher of San Francisco. This provided that, "All persons of foreign birth, before engaging in any manner of employment on their own account or for others, within the State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost by any court of record of the State, etc.'"[58]

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[54] Constitution of California, Art. XIX, Sec. 2. *Debates and Proceedings*, etc., p. 658.

[55] *Debates and Proceedings*, p. 664.

[56] *Ibid.*, pp. 77, 80, 82.

[57] *Ibid.*, p. 630.

It seems almost incredible that these measures intended to deprive a hundred thousand men of their means of livelihood could have been seriously entertained. Those who advocated them frankly avowed their character as war measures. Barbour, a San Francisco attorney who had defended the leaders of the Workingmen's Party, agreed that much of the legislation suggested resembled that of the Dark Ages, or, as some one had expressed it, "Hottentot legislation," yet he declared that he favored it because of the necessities of the situation. He wanted to shock the sensibilities of the people of the East, so that they would realize that the Californians were in earnest, even if barbarous and cruel. If sufficiently startled, Congress might be driven into doing something,—anything was better than what he characterized as "this eternal contempt of the demands of the people of the Pacific Coast."[59] Other members were, however, unsparing in their denunciation of such a course, and measures of this character were finally abandoned.

Exclusion by taxation was suggested, but this was rejected because of its doubtful constitutionality.[60] The refusal of all licenses to do business was also urged, but was open to the same objections as those against refusing employment.[61] A section which prohibited the Chinese from fishing or from holding real-estate, was another of these efforts at depriving them of the means of earning a living. This section was reported from the committee of the whole, but on the second reading of the article it was struck out by a vote of 64 to 56.[62] No effort was made to defend the proposal that the Chinese be excluded from the courts,[63] as this was obviously in conflict with the treaty and with the civil rights statute.

Many members of the convention were in favor of a bold declaration of the right of the state to determine who should be allowed to become residents. The instances where Illinois and Indiana had excluded free negroes were cited as precedents.[64] Barnes, who was an able lawyer, declared that this was the only manly course, that the measures proposed were disgraceful and evasive, and that he did not want to go to the Supreme Court with provisions that would make California the laughing-stock of the country. He concluded, "If you are going to keep the Chinaman here, give him the privileges of every other man, and let him earn his living the best way he can. But if we believe, as I think we do, that his presence is injurious and destructive to the very form of government under which we live; destructive to private rights and public morals; injurious to every interest in the State, there is no other way for *men* to do but to come squarely up and say to him, "*You must go!*" He presented a substitute measure which required all the Chinese to remove from the state within four years. While he did not advocate nullification, or any refusal to recognize the authority of the Supreme Court, he did not believe the states should be deprived of legislation for their welfare through fear of a possible conflict with the Constitution. The results of the existing treaty with China violated the fundamental principles of the original compact between the states and the Federal government, and it was right for the state to test the validity of the treaty.[65]

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[58] *Debates and Proceedings*, p. 656.

[59] *Ibid.*, p. 651.

[60] *Ibid.*, p. 728.

[61] *Ibid.*, pp. 98, 627-8.

[62] *Ibid.*, p. 1428-1431.

[63] *Ibid.*, pp. 627, 714.

There were others who endorsed states rights doctrines.[66] Not all the members had learned the discretion of one Southerner, who said he had thought that way once, and had fought to maintain his beliefs, "but knew when he was licked!" When the patience of the members who had insisted that the matter was outside the jurisdiction of the state was exhausted, they tried ridicule. Rolph proposed as a substitute for one of the unconstitutional measures, "The Constitution of the United States and the laws and treaties made thereunder, so far as they may conflict with the Constitution of this State, are hereby declared null and void, and any Judge of any Court who shall hold otherwise shall be punished by death or imprisonment for life."[67]

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[64] *Debates and Proceedings*, pp. 705-7, 1436.

[65] *Ibid.*, pp. 686-690.

[66] *Ibid.*, pp. 634, 635, 651, 697, 698.

The report of the committee of the whole recommended a section declaring that "No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution."[68] When it came to the final vote on the Chinese article of the constitution, the motion to strike out this section because of its conflict with the authority of the Federal government was carried by one vote, the count showing 61 for and 60 against the motion. The legislature was, however, charged with the duty of doing all in its power to discourage Chinese immigration, and required to provide the necessary legislation to prohibit their introduction after the adoption of the constitution. Thus the convention passed back to the legislature the task which had proved quite beyond its powers.[69]

Though unable to devise any plan for checking the immigration of the Chinese, the convention sought to mollify the residents of cities and towns who were the chief complainants by a local option control of their places of residence. Incorporated cities and towns were authorized to remove the Chinese without their limits, or to prescribe the limits within which they should live.[70]

During the earlier debates there were gloomy forecasts of the deeds of violence that might follow the failure to find adequate remedies for the evils due to the presence of this objectionable race,[71] but while the convention was sitting news came of the first action of Congress to restrict Chinese immigration. The hope of Federal legislation reconciled the more radical members to the defeat of all extreme measures.

The first legislature convening after the adoption of the constitution had a strong majority of Republicans, with the Workingmen's Party second in numbers. The laws necessary for enforcing the sections of the constitution dealing with the Chinese were enacted. The penal code was amended by adding sections forbidding the employment of Chinese by the corporations of the state;[72] a statute was passed providing for the removal of the Chinese outside the limits of cities and towns;[73] the measure which had been rejected by the constitutional convention, prohibiting the Chinese from fishing in the waters of the state, became a law;[74] and the earlier exclusion of the Chinese from employment in a drainage district was made generally applicable.[75]

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[67] *Debates and Proceedings*, p. 728.

[68] *Ibid.*, p. 1428.

[69] *Ibid.*, p. 1519. Constitution of California, Art. XIX, Sec. 4.

[70] *Debates and Proceedings*, pp. 653, 1519. Constitution of California, Art. XIX, Sec. 4.

[71] *Debates*, etc., pp. 653-4, 677, 701.

Governor Irwin, in his message, remarked upon the fact that the convention had charged the legislature with the duty of devising some means of stopping the Chinese immigration, and asserted, "It is my opinion that all hopes of getting rid of the Chinese, or of stopping Chinese immigration which are based on the assumed power of the State to deal with the question will prove illusory."[76] The people of the state were beginning to realize this, so that for the next ten years they devoted their energies to devising ways of influencing Congress.

By the authority of an act of the legislature, approved December 21, 1877, the people of the state were called upon to express themselves upon the subject of Chinese exclusion in the election of September 3, 1879. The results of this vote indicate a very remarkable unanimity of opinion throughout the state; of the 161,405 votes cast, 154,638 were opposed to the admission of the Chinese, and 883 favored it, 5,884 failing to vote on the question.[77] In his message transmitting the results of this election, Governor Irwin laid great emphasis on the significance of this popular verdict. He declared that there was no reason to discount the result as an expression of the wishes of the people of the state, as the vote was by secret ballot at a time when there was no undue excitement. He claimed that the decision could not be attributed to ignorance or prejudice, as fully two-thirds of the voters of the state were natives of the United States, the majority of them from northern and western states. They were men not inclined to race prejudice, who by education and association had been well grounded in the principles of our free institutions and who fully appreciated the sacredness of individual liberty.

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[72] *Penal Code,* Secs. 178, 179. Repealed, *Statutes and Amendments,* 1905, p. 652.

[73] *Statutes of California,* 1880, p. 22.

[74] *Ibid.,* p. 123.

[75] *Ibid.,* Chap. 117, p. 131, Sec. 28.

[76] *Appendix, Journals Senate and Assembly,* 23d Sess., Vol. 5, Doc. 20, p. 35.

[77] Mrs. Mary Roberts Coolidge has called my attention to the fact that the ballots were printed in such a way as greatly to increase the chances of a vote against the Chinese at this election. I quote Governor Irwin's estimate of the significance of the vote. For a completer discussion of the subject, see Mrs. Coolidge's book on *Chinese Immigration* (New York, 1909).

A year later a similar vote was taken in Nevada with like results; total vote cast, 18,397; for the admission of the Chinese, 183; against it, 17,209; not voting, 955.[18] Even when one makes allowance for the influence of any peculiarities in the printing of the ballots, the results of these elections indicate a remarkable uniformity of public opinion. Those favoring the admission of the Chinese or failing to vote might easily have been persons whose economic welfare depended on a supply of cheap Asiatic labor. There can be no question that the great majority of the citizens of these states were thoroughly convinced that men of this race were unfitted for membership in an American commonwealth.

After all the discussions of the constitutional convention, the provisions prohibiting the employment of Chinese by corporations, and permitting cities and towns to regulate their places of residence, were the only new measures finally enacted. A decision of the United States District Court soon deprived these laws of their force. Much attention was attracted to the legislation restricting the employment of Chinese by corporations, as it led to the discharge of many such employees immediately after the adoption of the constitution. In a few instances, as in the case of the Pioneer Woolen Mills where three hundred Chinamen were discharged, it became necessary to close down for lack of skilled operators. The unemployed white men of San Francisco, who were still holding meetings on the sand-lots.

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[18] *Congressional Record*, Vol. XI, p. 709.

also kept this law before the public by a series of demonstrations for the purpose of inducing the corporations of the city to substitute white help for the Chinese in their employ. Day after day the procession of unemployed men marched to the headquarters of these corporations and presented their request. In many instances their efforts met with a favorable response.[79]

The validity of this provision of the constitution and of the subsequent act of the legislature was tested in the case of Tiburcio Parrott.[80] In rendering his decision, Judge Hoffman took occasion to criticize severely this type of legislation and the lawless threats against the Chinese. He pointed out that the law violated the civil rights act, which provides that all persons within the jurisdiction of the United States shall have the same rights in every state and territory. He said that the right to labor for a living "is as inviolable as the right of property, for property is the offspring of labor. It is as sacred as the right to life, for life is taken if the means whereby we live be taken." He declared that this provision of the constitution was in open and seemingly contemptuous violation of the provisions of the treaty which gave the Chinese the right to reside here with all the privileges and immunities of the most favored nation. He concluded with a warning and a vigorous rebuke for the lawless element of the community that had so freely threatened violence against the Chinese. He said, "The declaration that, 'The Chinese must go, peaceably or forcibly,' is an insolent contempt of national obligations and an audacious defiance of the national authority. Before it can be carried into effect by force the authority of the United States must first be not only defied, but resisted and overcome. The attempt to effect this object by violence will be crushed by the power of the government. The attempt to attain the same object indirectly by legislation will be met with equal firmness by the courts; no matter whether it assumes the guise of an exercise of the police power or of the power to regulate corporations, or of any other power reserved by the State; and no matter whether it take the form of a constitutional provision, legislative enactment, or municipal ordinance." This warning checked further attempts to carry out some of the more radical restrictions which had been implied if not actually sanctioned by the new constitution.

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[79] *Alta*, February 12-15, 1880.

[80] *In re Tiburcio Parrott*, 1 Fed. Rep. 481. *Alta*, March 7, 21, 23, 1880.

CONTINUED EFFORTS OF THE LABOR ORGANIZATIONS TO SECURE CHINESE EXCLUSION.

During the eighties the efforts to solve the Chinese problem were transferred from the state to the national legislative bodies, but the workingmen's organizations of the Pacific Coast were still back of the whole movement. They never relaxed their strenuous efforts to enlist the active assistance of fellow trade-unionists in the East, or ceased to make known their grim determination to prevent the continued influx of Oriental labor, even if by a last resort to violence. They ignored all party lines and voted steadily and consistently with a view to the promotion of this one issue. The special anti-Chinese leagues were continued, and all new organizations of workingmen recognized this as one of their chief aims. Special conventions for the consideration of the subject of Chinese exclusion were held in 1882 and 1885, as well as at subsequent periods when the renewal of the legislation on the subject was under discussion. The more detailed accounts of the actions of these conventions will be given in connection with the history of the Federal anti-Chinese legislation.

CHAPTER VI.

FEDERAL LEGISLATION REGULATING CHINESE IMMIGRATION, 1871-1902.

NATURALIZATION LAWS.

We have seen that the first full presentation of the Chinese question in Congress by the representatives of the Pacific Coast resulted in a hard-won victory. The Chinese, through the refusal of the right of naturalization, were excluded from the full privileges of citizenship, which had recently been granted to the freedmen of the South, and which might also be acquired by negroes born outside of the United States. The amended laws did not positively prohibit the naturalization of the Chinese, and some of the eastern states, assuming that they were included in the term "white," admitted them to full citizenship.[1] The Revised Statutes of 1873[2]—it was claimed by a clerical error—omitted the word "white" from the section on naturalization. A number of Chinese, taking advantage of the alleged oversight, hastened to apply for naturalization.[3] In 1875 the original wording of the law was restored. We have seen that the generous guarantees of the Burlingame Treaty did not include the right of naturalization. Before ratification, on motion of a California Senator, Art. VII was amended by the insertion of the clause, "But nothing herein contained shall be held to confer the right of naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States." The exclusion law of 1882 positively prohibited the naturalization of the Chinese, and in the renewal of the guarantees of the privileges of the most favored nation in the treaty of 1894, a clause was added "excepting the right to become naturalized citizens."[4]

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[1] See the case of Hong Yen Chan, who was a naturalized citizen of New York, and applied for admission to practice in the courts of California. 84 Cal. 163-4.

[2] *Revised Statutes*, Sec. 2165.

[3] Also Brooks, *Brief on the Legislation*, etc., p. 96.

LAWS PROHIBITING CONTRACT LABOR.

The earlier law of 1862 prohibiting the coolie traffic was intended primarily for the correction of the terrible abuses connected with the carrying of large numbers of involuntary contract laborers to the West Indies and South America, rather than for the regulation of the immigration to California.[5] In the later sixties an attempt was made to introduce Chinese contract labor into the eastern and southern states. An agent traveled about taking orders, and Chinese laborers were sent to Massachusetts, Louisiana, Mississippi, South Carolina, and possibly some other states. But as the hopes for extensive orders were not realized, the plan was abandoned. A law was passed in 1875 for the purpose of making such schemes impossible, and for the correction of other flagrant abuses connected with Chinese immigration. The penalties for engaging in the coolie traffic were made more severe;[6] all contracts entered into before immigration for the performance of labor in the United States were declared void; and the importation of women for immoral purposes was made a crime.[7]

EARLY EFFORTS OF WESTERN CONGRESSMEN TO SECURE CHINESE EXCLUSION.

In the long struggle to secure legislation excluding the Chinese the Congressmen from California, Oregon, and Nevada seem to have been equally diligent. Probably A. A. Sargent of Nevada City, California, and later of San Francisco, did more than any one man to bring about the first recognition of the need of restrictive legislation. As early as 1862,[8] when serving as a Representative, he presented the evils due to the presence of the Chinese; he was also the leader in the efforts to secure a modification of the Burlingame Treaty, and conducted the campaign resulting in the passage, in 1879, of the first congressional measures restricting Chinese immigration.[9]

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[4] 28 *Statutes at Large*, 1211, Art. IV.

[5] *Congressional Globe*, 37th Cong., 2d Sess., pp. 16, 350, 593, 838, 855.

[6] *Revised Statutes*, pp. 2158-2163.

[7] 18 *Statutes at Large*, 477-8.

[8] We have been unable to find this speech, though Sargent in a later speech said that he made such a presentation of the subject. *See Congressional Record*, 44th Cong., 1st Sess., p. 2856.

JOINT CONGRESSIONAL COMMITTEE OF INVESTIGATION OF 1876.

We have seen that between 1870 and 1880 there was a great, and to the Californians, a most alarming increase in the number of Chinese arriving at San Francisco; and that during this period the people of California, particularly the workingmen of San Francisco, were engaged in a continuous anti-Chinese campaign, which broke out at intervals in great popular demonstrations. We remember that the year 1876 was the one marked by the greatest influx of Chinese and by a correspondingly vigorous demonstration. The California representatives at Washington faithfully reflected the feelings and made known the demands of their constituents. In February, 1876, Senator Booth presented the resolutions of the California legislature calling for a modification of the Burlingame Treaty.[10] Sargent[11] in the Senate and Page[12] in the House promptly brought in concurrent resolutions requesting the President to open negotiations with the Chinese Government for the purpose of securing such changes in the treaty as would permit a restriction of immigration. The resolutions were passed, but the President failed to act in the matter. Committees were appointed in the Senate[13] and House to investigate the character and extent of the objectionable immigration, and, at the suggestion of Senator Sargent, it was agreed that they should act as a joint committee.[14] This committee began taking testimony in San Francisco in the following October, and in February, 1877, brought in a voluminous report of over twelve thousand pages.[15]

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[9] Among some of the bills presented prior to the appointment of the Joint Committee of Investigation were the following:

Senator Williams of Oregon, Bill to regulate the immigration of Chinese. *Congressional Globe*, 41st Cong., 2d Sess., pp. 299-301.

Representative Johnson of California, Joint resolution declaratory of the right in states to protect themselves against a nuisance, etc. *Ibid.*, pp. 338, 752.

Representative Sargent of California, Bill to prohibit contracts for servile labor. *Ibid.*, p. 4112.

Representative Mungen of Ohio, Joint resolution in regard to the protection of our laboring and producing classes against the Chinese. *Ibid.*, p. 5439.

Senator Stewart of Nevada, Resolution calling for information in regard to the importation of coolies. *Ibid.*, p. 5395.

Representative Mungen of Ohio, Speech on Chinese. *Congressional Globe*, 41st Cong., 3d Sess., pp. 351-360.

Representative Houghton of California, Bill providing for a commission to collect information relative to the condition of the Chinese in the United States. *Congressional Record*, II, 43d Cong., 1st Sess., p. 587.

Representative Page of California, Bill providing for the exclusion of the Chinese from the benefits of the naturalization laws of the United States. *Congressional Record*, III, 43d Cong., 2d Sess., pp. 224, 1561.

Representative Luttrell of California, Bill to prevent naturalization of Chinese and Mongolians. *Congressional Record*, IV, 44th Cong., 1st Sess., p. 477.

Representative Piper of California, Bill to restrict immigration of Chinese. *Ibid.*, p. 3121.

As a result of this investigation a majority of the committee brought in a recommendation to the effect that, "Measures be taken by the Executive looking towards a modification of the existing treaty with China, confining it to strictly commercial purposes; and that Congress legislate to restrain the great influx of Asiatics to this country. It is not believed that either of these measures would be looked upon with disfavor by the Chinese Government. Whether this is so or not, a duty is owed to the Pacific States and Territories, which are suffering under a terrible scourge, but are patiently waiting for relief from Congress." The committee said that violence could be restrained so long as there was a reasonable hope that Congress would apply a remedy, but declared that the safety of the state demanded that political power should not be placed in the hands of the Chinese, as they had no love for or appreciation of our institutions.[16] The report stated that, while the resources of the Pacific Coast could be more quickly developed with the help of the Chinese, whose labor was profitable for the capitalist classes, the laboring men and artisans were, without exception, opposed to the further admission of the Chinese. The committee found many lawyers, doctors, merchants, divines, judges, and other intelligent citizens, who declared that the apparent prosperity derived from the presence of the Chinese was deceptive and unwholesome, "ruinous to our laboring classes, promotive of caste, and dangerous to free institutions." Twenty operatives of different trades testified that the competition of the Chinese had reduced their wages to the starvation point. The fact that these hardships bore with especial weight on women wageworkers was emphasized.[17]

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[10] *Congressional Record*, IV, 44th Cong., 1st Sess., p. 901.

[11] *Ibid.*, p. 2850.

[12] *Ibid.*, pp. 3087, 3763.

[13] *Ibid.*, p. 4421.

[14] *Ibid.*, pp. 4678, 4705.

[15] 44th Cong., 2d Sess., Rept. No. 689. (Published in a separate volume, Serial No. 1734.)

[16] Report of the Joint Committee, 44th Cong., 2d Sess., No. 689, pp. v-viii, Serial No. 1734.

The effect of these recommendations of the majority of the committee was greatly weakened by an incomplete minority report written by Oliver P. Morton. He had been chairman of the committee but died before its work was completed. The friends of the Chinese seized upon the following passage of his partial report, and frequently quoted it in refutation of the recommendations of the committee: "If the Chinese in California were white people, being in all other respects what they are, I do not believe that the complaints and warfare made against them would have existed to any considerable extent. Their difference in color, dress, manners, and religion have, in my judgment, more to do with this hostility than their alleged vices, or any actual injury to the white people of California." He did not believe that the Chinese could be protected, while remaining in their alien condition, without representation in the legislature or Congress, or a voice in the selection of the officers who administered the laws. Complete protection could be given them only by allowing them to become citizens and acquire the franchise, when their votes would become important in elections and their persecutions converted into kindly solicitation.[18]

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[17] Report of the Joint Committee, etc., p. iv.

[18] Senate Mis. Doc. No. 20, 45th Cong., 1st Sess., p. 4, Serial No. 1785,

THE FIRST RESTRICTIVE LEGISLATION,—THE FIFTEEN PASSENGER BILL.

The report of the joint committee prepared the way for congressional action for a restriction of the immigration, and the violent agitation against the Chinese by the Workingmen's Party of California[19] made the need seem more urgent. A number of bills were brought in at the next session of Congress proposing varied plans for dealing with the question. In the House Davis[20] from San Francisco, and Luttrell[21] from Santa Rosa, considered it their duty as representatives of California interests to present bills restricting the immigration of the Chinese or preventing their employment and naturalization. The Nevada Representative had a bill ready,[22] and Shelley from Alabama proposed a plan which not only prohibited further immigration,[23] but undertook to transport and colonize the Chinese already here.[24] The California Senators also busied themselves with the Chinese legislation. Sargent presented a bill for the restriction of immigration,[25] but he and Booth devoted their efforts chiefly to procuring the passage of a concurrent resolution again calling on the President to open correspondence with China and Great Britain[26] for the abrogation of the treaty provisions permitting unlimited immigration of the Chinese.

The House Committee on Education and Commerce sent in a prompt and unanimous endorsement of the resolution calling for the opening of correspondence for the purpose of securing a restriction of immigration. Willis, the chairman of this committee, was a Kentuckian who had a strong sympathy for the Californians in their efforts to solve the difficult race problem of the Pacific Coast. The report which he presented pointed out that during the twenty years of Chinese immigration the rate of increase was fifty per cent. in each succeeding five years, that at such a rate the Chinese would soon outnumber the whites, and that they already closely approximated the voting population in numbers.[27] Once more Congress deferred action, waiting for the President to prepare the way by securing a modification of the treaty. But as with the previous resolution, there were no results; the President was either unwilling or unable to meet the wishes of Congress. In a speech at a later date, Senator Miller indicated that the President made some advances in the matter, but that they met with an unfavorable response from China and were not pressed.[28]

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[19] See above, pp. 30, 150.

[20] *Congressional Record*, VII, 45th Cong., 2d Sess., p. 383.

[21] *Ibid.*, pp. 98, 271.

[22] *Ibid.*, p. 318.

[23] *Ibid.*, p. 68.

[24] *Ibid.*, p. 320.

[25] *Ibid.*, p. 81.

[26] This was necessary because the Chinese coming from Hong Kong were subjects of Great Britain.

At the next session of Congress, the House, impatient with the long delay, showed a determination to take some action even though it meant the repudiation of the treaty with China. The Committee on Education and Labor, to whom the numerous resolutions, memorials, petitions, and bills on the Chinese had been referred, recommended a bill providing that no master of a vessel should be permitted to take aboard more than fifteen Chinese passengers bound for a United States port. In presenting this bill the committee reviewed the previous efforts to secure restrictive legislation, referring to the numerous petitions urging such legislation, that the people of the Pacific Coast had sent to Congress since 1868, and calling attention to the fact that the President had twice been presented with joint resolutions urging him to seek a modification of the treaty. The committee discussed the question of the power of Congress to pass laws which would supersede a treaty, maintaining that, "To refuse to execute a treaty for reasons which approve themselves to the conscientious judgment of a nation is a matter of the utmost gravity, but the power to do so is a prerogative of which no nation can be deprived without deeply affecting its independence."[29]

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[27] House Report No. 240, 45th Cong., 2d Sess., Serial No. 1822. An adverse report by Kennaday, a lobbyist for the Chinese, was published, Sen. Misc. Doc. No. 36, Serial No. 1786.

[28] *Congressional Record*, XIII, p. 1481.

[29] H. of R. Report No. 62, 45th Cong., 3d Sess., Serial No. 1866.

Willis, the chairman of the committee recommending the bill, was one of the ablest advocates of the measure on the floor of the House. In his speech in its support he stated, "There are today in the hands of our committee the joint resolutions of four state legislatures, the memorial of the Constitutional Convention of California, passed only a few days ago without a single dissenting voice, together with the proceedings of innumerable societies, religious bodies, labor conventions, and the petitions of over one hundred thousand private citizens, setting forth from different standpoints the evils of Chinese immigration, and urging upon Congress the necessity for prompt and vigorous measures of relief."[30] The bill restricting the number of Chinese passengers passed the House on January 28th, 1879, the vote standing, yeas 155, nays 72, not voting 61.[31]

The Senate Committee on Foreign Affairs, to whom the various anti-Chinese measures were referred, was unwilling to promote this restrictive legislation. Hamlin, the chairman of the committee, was one of the New Englanders who had persistently opposed all such measures, both because they feared that the commercial interests of their constituents would be jeopardized, and because such a policy was in violation of the theories of political equality which were being so fully recognized in all the legislation dealing with the recently emancipated negroes. On behalf of the committee Hamlin reported the House bill with the request that they be discharged from its further consideration, thus sending the bill restricting the number of Chinese passengers to the Senate calendar without recommendation.[32]

In the debates[33] on the bill the Senators from California, Oregon, and Nevada were assisted by the southern members, who not only sympathized with the point of view of the people of the Pacific Coast, but also found in this discussion an opportunity to protest against the legislation dealing with their own race problems. Blaine was one of the most influential supporters of the measure,—his enemies pointed out his inconsistency, since he had been an advocate of negro rights, and declared that his judgment was biased by his presidential aspirations. The most bitter opponents of the bill were the Senators from New England, Hamlin, Dawes, Hoar, Matthews, Wadleigh, and Edmunds. Of these Senators, Edmunds was particularly vigorous in his denunciation of this type of legislation. He declared that he wished to voice his utter abhorrence of the principles upon which the bill was founded, and expressed the hope that the Constitution had yet provided some means by which the measure so odious to him would fail to become a law. The Democrats, who also had an eye to the next presidential campaign, lobbied quite energetically for the passage of the bill. By a vote of 39 to 27 the measure passed the Senate.

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[30] *Congressional Record,* VIII, 45th Cong., 3d Sess., p. 799.

[31] *Ibid.,* pp. 791-2, 793, 793-800.

[32] *Ibid.,* p. 1072.

[33] *Ibid.,* pp. 1299 ff.

Judging by an extract from a letter quoted by Senator Sargent, the rejoicing in San Francisco over the passage of this bill was quite hysterical in its intensity. His correspondent declared that men,—strangers to each other,—embraced upon the streets and wept for joy when they received the news.[34] But their joy was short-lived for it was soon rumored that the President would veto the bill. Everything possible was done to prevent such action. The chambers of commerce of the Coast cities,[35] and the constitutional convention sent telegrams urging the signature of the bill. The merchants of San Francisco closed their places of business so that their employees might swell the numbers of the great mass meetings held under the auspices of the city and state officials.[36] The Pacific Coast representatives called on the President and his Cabinet with additional arguments and evidences of the urgent demands for the approval of the measure.

But no amount of pressure would induce President Hayes to sign the bill. In his veto message he said that, while he recognized the right of Congress to terminate a treaty, such a denunciation was justified only by a great necessity. He also pointed out that the abrogation of a part of the treaty might invalidate the whole and thus leave American interests in China unprotected.[37]

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[34] *Alta*, February 26, 1879 (report of Sargent's speech).

[35] *Ibid.*, February 25.

[36] San Francisco daily papers of February 27 and 28, 1879. The *Alta* publishes a list of 82 merchants who closed their places of business during the meetings.

BITTER RESENTMENT OF THE VETO OF THE BILL.

Of course the veto brought bitter disappointment to the people of the Pacific Coast. A Salt Lake paper, in commenting on the California press notices, declared that the stock of denunciatory words in Webster's Unabridged was exhausted by the editors of the state in their efforts to give adequate expression to the indignation aroused by the President's action. The strong influence of the Chinese question was clearly shown in the presidential elections of this period. In 1880 six of the seven California electors cast their votes for the Democratic candidate, though the state legislature of the same year had a strong Republican majority. In the election of 1884 the whole electoral vote of California was cast for Blaine in appreciation of his efforts on behalf of Chinese exclusion.

The situation in San Francisco was becoming quite strained. The meetings and processions of the unemployed still continued, and these desperate men had long been threatening to take matters in their own hands if Congress gave no relief. Other smaller cities on the Coast had already succeeded in expelling the Chinese by popular uprisings. The repeated threats, together with the efforts to drill and arm some of the men, caused much uneasiness, and fears of an outbreak of violence against the Chinese. An organization known as the Citizens' Protective Union was formed for the purpose of suppressing disorder and guarding against an outbreak. An address to the public was issued in which it was declared that, "The drills in secret places, the nightly tramp in the streets of irregular armed forces, accompanied by the arrogant threats of violence by their leaders, are an intolerable menace to the peace and well-being of society."[38] All good citizens were called upon to assist in restoring order, and to be prepared to prevent any outbreak of violence.

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[37] *Congressional Record*, 45th Cong., 3d Sess., pp. 2275-6.

[38] *Alta*, March 9, 1880.

The organization does not appear to have been a large one, and since its proceedings were secret, it is difficult to estimate its influence. The knowledge of the existence of such a body of men may have proved a restraining influence. While no doubt the rank and file of the workingmen of the city were good, law-abiding citizens, a numerous lawless element tended to collect at this great center of population. The long-continued idleness of large numbers of men, many of whom had no family ties, was in itself a sufficient cause of demoralization. The frequent sand-lot meetings, with their intemperate oratory, tended to aggravate the discontent and bitterness due to the unfortunate economic conditions. Then, too, there were undoubtedly many men who sincerely believed that it was their highest duty to exclude the Chinese by force if Congress failed to give relief.[39] For many years the public had been listening to impassioned oratory presenting in the most forceful way the righteousness of this cause, and every one felt the full support of public sympathy. In the test vote of September, 1879, only 224 of the 41,258 voters of San Francisco had voted in favor of the continued admission of the Chinese. The past history of the city furnished ample precedents for the execution of the will of the majority of the citizens by illegal or extra-legal popular uprisings.

NEGOTIATION OF A NEW TREATY WITH CHINA.

When the Forty-sixth Congress convened, the western members promptly renewed their efforts to obtain action on this, the chief political issue of the Pacific Coast.[40] At last the President appointed commissioners[41] to negotiate a modification of the treaty with China, and in November, 1880, the new treaty was concluded. It provided that, "Whenever, in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations.''[42]

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[39] *Alta*, March 22, 1880. A typical expression of this point of view is that of the speech of McCormick. Similar expressions frequently occur in the speeches of the time. When one considers the long agitation of the subject, it is easy to see that persons of somewhat fanatical temperaments might easily have acquired this point of view.

[40] For bills and resolutions on the subject see *Congressional Record*, X, 46th Cong., 2d Sess., pp. 143, 151, 221, 286, 646, 678, 1438. H. R. Misc. Rep. Doc. 5, Serial No. 1928.

[41] The commissioners were James B. Angell, John F. Swift, Wm. H. Trescot.

THE EXCLUSION LAW OF 1882.

The way was now open for legislation. The Senate at this time was evenly divided between the Republicans and the Democrats, while in the House there was a Republican majority. The platforms of both parties contained planks pledging their candidates to the support of measures restricting Chinese immigration, though the Democrats were disposed to go much further than the Republicans in promoting such legislation. In the House the Committee on Education and Labor embodied the provisions of the various measures referred to them[43] in a substitute bill which was reported back with their recommendation.[44] But it soon became evident that the Senate with its stronger Democratic membership would take the lead in legislation of this kind.[45] Sargent had been succeeded by J. F. Miller, who reported from the Committee on Foreign Affairs the bill which finally passed both houses.

This bill, which was entitled ''An act to execute certain treaty stipulations relating to the Chinese,'' gave as the reason for exclusion the fact that the coming of Chinese laborers endangered the good order of certain localities. The original bill proposed to prohibit the coming of Chinese laborers for twenty years. Chinese laborers who were in the United States on the seventeenth of November, 1880, or who came during the ninety days following the passage of the act were exempted from its restrictions.[46] Provisions were made for the identification of such Chinese as were entitled to admission, and severe penalties attached to the violation of the terms of the act. Before coming to a vote the whole subject of Chinese exclusion was again discussed most exhaustively,—at times with considerable acrimony.

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[42] *Treaties and Conventions of the United States*, pp. 182-3. Sen. Ex. Doc., 48th Cong., 2d Sess., Vol. I, Pt. 2, Serial No. 2262.

[43] Berry and Page of California and Willis of Kentucky introduced the bill in the House. *Cong. Record*, XIII, 47th Cong., 1st Sess., pp. 89, 90, 217, 561. See also *H. R. Rept.* No. 67, 1017.

[44] *Congressional Record*, XIII, pp. 645, 737, 1899.

[45] Senators Miller and Farley of California and Grover of Oregon introduced bills in the Senate. *Ibid.*, pp. 5, 630, 2599, 2639.

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[46] Whereas, in the opinion of the Government of the United States, the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof; therefore,

Be it enacted by the Senate and House of Representatives in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.

Sec. 2.—That the master of any vessel who shall knowingly bring within the United States on such vessel and land or permit to be landed, any Chinese laborer from any foreign port or place, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of five hundred dollars for each and every such Chinese laborer so brought, and may be also imprisoned for a term not exceeding one year.

Sec. 3.—That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; . . . (Not to apply in case of shipwreck.)

Sections 4, 5, and 6.—(Certification and registration of Chinese entitled to return, and of Chinese other than laborers.)

Sec. 7.—(Penalties for falsifying certificates, $1000 fine, imprisonment not more than 5 years.)

Secs. 8 and 9.—(Lists of passengers to be furnished the Collector of Customs.)

Sec. 10.—That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall knowingly aid or abet the same, or aid or abet the landing in the United States from any vessel of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year.

Sec. 11.—(The vessel forfeited to the United States if guilty of violation of the provisions of the act.)

Sec. 12.—(Provided for the removal of Chinese not entitled to residence in the United States.)

Sec. 13.—(The act not to apply to Chinese officials.)

Sec. 14.—That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Sec. 15.—That the words "Chinese laborers," wherever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

(22 *Statutes of the United States*, Ch. 126, p. 58. May 6, 1882.)

The original bill is found in *Congressional Record*, XIII, 47th Cong., 1st Sess., pp. 1480-1.

Miller in opening the Senate debate made a dignified and forceful argument in support of the bill, which he presented as the unanimous report of the Committee on Foreign Affairs. He pointed out that the government was already committed to such legislation, since a treaty had just been negotiated for the purpose of permitting it. In the last election both political parties and their candidates had pledged themselves to a restriction of Chinese immigration. He quoted the results of the test vote in California and Nevada to show how universal was the opposition to its continuance on the part of people best fitted to judge of its significance. He produced statistics showing the magnitude of the immigration, and its possible development in case this measure failed to pass. The conditions making it impossible for the two types of labor to compete were fully explained, and figures presented showing the encroachment of the Chinese in the industries of the Pacific Coast. He declared that, "An 'irrepressible conflict' is now upon us in full force, and those who do not see it in progress are not so wise as the men who saw the approach of that other 'irrepressible conflict' which shook the very foundations of American empire on this continent."[47]

The other Senators from the region west of the Rocky Mountains were, of course, equally ardent in their support of the bill. Senator Grover of Oregon declared that throughout its history the people of his state had opposed the admission of the Chinese, as in the state constitution it was provided that the legislature should have authority to exclude from the state all persons not qualified to become citizens, and no Chinaman, not a resident of the state at the time of the adoption of the constitution, was to be allowed to hold any real-estate or mining claim, or work any mining claim in the state.[48]

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[47] *Congressional Record*, XIII, Senate debates, pp. 1481-1488, 1515-1523, 1545-1549, 1581-1591, 1634-1646, 1667-1675, 1702-1717, 1738-1754. Passed, 1753.

[48] *Congressional Record*, XIII, p. 1545.

But the negotiation of the new treaty had by no means removed the objections of the New England members. As during the previous debates, they bitterly opposed every effort to put into execution this policy which threatened the commercial interests of the East, and appeared to them to be in direct violation of long-established national traditions, which had but recently been enforced at great sacrifice in the South. They had carefully studied the voluminous report of the joint committee of 1876, and were well supplied with facts in support of their arguments. They attributed the feeling in the western states to race prejudice, and to the agitation of foreign-born political demagogues. In answer to the claim that the working people were being injured by their presence, figures were produced proving that, notwithstanding the presence of the Chinese, the wages on the Pacific Coast were higher than in other parts of the country. Senator Hoar closed with the solemn warning. "As surely as the path on which our fathers entered a hundred years ago led to safety, to strength, to glory, so surely will the path on which we now propose to enter bring us to shame, to weakness, and to peril."[49] Dawes, Platt, and Edmunds also did all in their power to defeat or amend the bill. Platt claimed that it went beyond what was intended in the recently signed treaty, and supported his assertions by quoting from the correspondence of the commissioners.[50]

As in the debates on the previous restrictive measure, the southern members were heartily in sympathy with the proposed legislation. Senator George of Mississippi said he favored the passage of the bill for two reasons: First, because the white people of the states most affected by the Chinese immigration with almost entire unanimity desired its passage. Second, because it would really and truly protect American labor.[51] His emphasis of the wisdom of a similar home-rule policy in the settlement of southern race problems was the subject of a good deal of comment. Call of Florida and Brown of Georgia said they would vote for the restriction or a reasonable time of suspension of Chinese immigration, at the same time insisting on the necessity of amending the proposed bill so that it would conform to the terms of the recently negotiated treaty.[52]

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[49] *Congressional Record*, XIII, pp. 1515-1523.

[50] *Ibid.*, pp. 1702-1707.

[51] *Ibid.*, p. 1637.

The last two sections of the bill were added as amendments, after its introduction. Senator Farley proposed the section prohibiting the naturalization of the Chinese;[53] Senator Grover added the definition of "laborers" as including both skilled and unskilled workers.[54] Various attempts were made to pass other amendments that would have weakened the bill, but these were defeated. In both the Senate and the House objections were raised to the section which included the skilled laborers in the prohibited class, and to the length of the time specified. It was repeatedly pointed out that twenty years was a much longer time than had been contemplated in the negotiations of the recent agreement with the Chinese government, but all amendments reducing the time were voted down. It was evident that the friends of the measure had good majorities in both houses and were determined to make no concessions. The bill passed the Senate by a vote of 29 to 15.[55] The arguments with which we have already become familiar were repeated in the House of Representatives, which finally approved the bill by a vote of 167 to 66.[56]

While the debates were in progress, every effort was made to impress Congress with the extent of the popular demand for legislation of this kind. A legal holiday was proclaimed in California for the purpose of holding mass meetings.[57] Needless to say, the people availed themselves of the opportunity to express their wishes. Four meetings were held in San Francisco, one of which claimed an attendance of thirty thousand. In Oakland, Los Angeles, Stockton, Sacramento, Fresno, and a long list of other California cities, similar meetings were held, and resolutions adopted endorsing the bill. These were telegraphed to Washington to be used in the debates as evidence of the demands of the people. By this time the labor organizations all over the country were thoroughly enlisted. Petitions and memorials expressing the wishes of hundreds of thousands of workingmen were presented from New York, Massachusetts, Pennsylvania, Ohio, West Virginia, Wisconsin, Minnesota, Missouri, Iowa, Indiana, Alabama, Maryland, and California. As was frequently pointed out in the debates, the bill marked a radical departure from the national policy which had hitherto welcomed the foreign immigrant of every country, but it is impossible to question the full endorsement of this legislation by the American people.

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[52] *Congressional Record*, XIII, pp. 1638-1644.

[53] *Ibid.*, p. 1481.

[54] *Ibid.*, p. 1480.

[55] *Ibid.*, p. 1753.

[56] *Ibid.*, pp. 2227-8.

[57] *Ibid.*, pp. 1667-8. See also the California papers, March 4-7, 1882.

Once more the President refused his sanction to the Congressional plan for solving the long-discussed problem. In his veto message, President Arthur said, "I am persuaded that if Congress can feel that this act violates the faith of the nation as pledged to China, it will concur with me in rejecting this particular mode of regulating Chinese immigration, and will endeavor to find another which will meet the expectations of the people of the United States without coming in conflict with the rights of China." He pointed out that the new treaty with China provided that, while the immigration might be limited or suspended, it was not to be absolutely prohibited. Neither contracting party had contemplated so long a suspension as twenty years, or would have considered such a period a "reasonable" suspension or limitation. The President declared that he regarded this provision as a breach of our national faith; and being unable to bring himself into harmony with the views of Congress on this vital point, the honor of the country constrained him to return the act with this objection to its passage. He also thought the registration provision futile and irritating, and pointed out the failure to provide for travelers in transit from other countries. With his message, the President transmitted the correspondence of the commissioners who had negotiated the treaty. This clearly showed that so long a period of suspension had not been contemplated by those negotiating the treaty.[58]

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[58] Sen. Exec. Doc. No. 148, 47th Cong., 1st Sess., Serial No. 1990.

The President's veto came near the end of the session, so that it was feared that there would not be time to secure any restrictive measure. It was not possible to pass the bill over the veto, so the changes suggested were hurriedly made, and the amended bill rushed through both houses, under a suspension of rules, without debate. The bill was finally passed May 6, 1882. its restrictions to take effect in the following August.

During the period when Congress had the subject under discussion, the San Francisco Trades Assembly was particularly active in the efforts to encourage this legislation. A mass meeting was held in February for the purpose of expressing appreciation of the efforts of the California Congressmen,[59] and another convention was called in April to protest against the action of President Arthur in vetoing the bill.[60] At both of these meetings emphasis was laid upon the duty of the working people of the Pacific Coast to take matters in their own hands in case Congress failed to give relief. The first of these meetings adopted a resolution to the effect, "That if Congress cannot or will not act in this matter, it is both the right and duty of the people of this Coast to attend to it themselves, living as they do at the outpost of American civilization against Asiatic barbarism." At the second of these meetings ten anti-Chinese leagues and many labor organizations of California and also from Nevada were represented. It was said that the miners' delegation from Virginia City came with instructions to report that if physical as well as moral support was necessary to accomplish the purpose of the convention, the members of the Miners' Union could be depended on to come down to San Francisco and give their help. At this time it was declared that, "The executive body created by this convention will when they have perfected the measures necessary for such action prevent the landing of that people on our shores at all hazards. This resolve we have made after mature deliberation because the further immigration of Chinese to this country means death to American labor. Resistance is now our duty." The Trades Assembly also made an unsuccessful attempt to organize an extensive boycott of Chinese-made goods.[61] After the passage of the exclusion law which took away the chief reason for their existence, both the special anti-Chinese organization known as the League of Deliverance, and the San Francisco Trades Assembly fell to pieces.

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[59] *Bulletin*, February 16 and 17, 1882.

[60] *Ibid.*, April 25, 1882.

AMENDMENTS TO THE LAW OF 1882.

When put into operation, the exclusion law of 1882 did not prove entirely satisfactory to the people of the Pacific Coast. The first important defect complained of was its failure to establish clearly the status of the Chinese who, by virtue of their residence in territory ceded to Great Britain, were no longer subjects of the Chinese Emperor. In 1883 there were two cases where the right of these immigrants from Hong Kong to enter the United States was contested. The case growing out of such an attempted landing at Boston was tried before Justices Lowell and Nelson of the United States District Court in Massachusetts. They decided that, since the exclusion law was in execution of a treaty with China, it did not apply to persons of the Chinese race who were subjects of other countries, and permitted the man to land.[62] When a similar case came before a court of the same rank in California, Justice Field reached an opposite conclusion.[63] He maintained that it had not been deemed necessary to negotiate treaties with other governments with respect to the Chinese, because it was believed that they would have no objections to the exclusion law. He claimed that the act of 1882 applied not only to laborers coming from China, but also to laborers of the Chinese race coming from any part of the world. The second section of the act made it a misdemeanor to land "any Chinese laborer from any foreign port or place." The whole purpose of the law would be defeated by any other construction.

It was maintained that some of the rulings of officers charged with the administration of the law had also opened the way for its wholesale evasion. Acting Secretary of the Treasury French decided that the Chinese who had left the country between the date of the ratification of the treaty with China and the time when the exclusion law took effect were entitled to return, and, in the absence of certificates, could establish their prior residence in the courts.[64] Another of these rulings was that of the Attorney-General who declared that Chinese laborers who came to this country in transit to some other place were not within the prohibition of the law and need not have certificates.[65] The California newspapers complained bitterly of what was characterized as the "process of nullification" of the exclusion law.[66]

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[61] *San Francisco Daily Report*, December 7, 1885, speech of Haskell.

[62] *U. S. v. Douglass*, 17 Fed. Rep. 634.

[63] *In re Ah Lung*, 18 Fed. Rep. 28.

Once more Congress was confronted with this perennial question. The Pacific Coast delegation, which included the representatives from California, Oregon, Nevada, and Washington Territory, held a conference at which they agreed upon the amendments necessary to make the law of 1882 effective. Section 1 of the former act was changed so that it would read, "during such suspension it shall not be lawful for any Chinese laborer to come *from any foreign port or place*, or having so come . . . to remain within the United States."[67] It was also proposed that the certificates issued by the Customs officials should be the only evidence permissible for establishing the right of reentry of Chinese laborers. As the Chinese government had grown somewhat careless in the matter of issuing certificates to merchants, provisions were made for a more complete description, and it was also required that such certificates be endorsed by the consular or diplomatic representative of the United States, who was held responsible for an investigation of the truth of its statements. Hucksters, peddlers, and those engaged in taking, drying, or preserving fish, were excluded from the privileges of merchants. The most important addition was that in Section 15, which declared that "the provisions of this act shall apply to all subjects of China and Chinese whether subjects of China or any other foreign power.''[68]

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[64] *In re Leong Yick Dew*, 19 Fed. Rep. 490. *In re Chin A On*, 18 Fed. Rep. 506. *In re Tung Yeong*, 19 Fed. Rep. 184.

[65] 17 *Op. Atty. Gen.* 483. House Ex. Doc. 214, 48th Cong., 2d Sess.

[66] See editorials, *Bulletin*, August 23, 1883.

[67] *Congressional Record*, XV, 3752-3777, passed Senate, 5937-8. House Report No. 614, 48th Cong., 1st Sess., Serial No. 2254.

Miller in the Senate, and Henley in the House, led the efforts to secure the passage of this new act, which they claimed was necessary to make the execution of the earlier law effective. In support of their demands, they pointed out the uncertainty of application of the law of 1882 as shown in the conflicting decisions of the Hong Kong immigrant cases, presented figures displaying the rapid increase of those claiming exemption from the restrictions of the earlier act, and complained of the clogging of the courts with the cases where, in the absence of certificates, attempts were being made to establish the right of entry by parole evidence.[69]

The opponents of these amendments insisted that the law of 1882 had achieved the desired reduction in the number of Chinese, since during the two years that it had been in operation the excess of departures over arrivals amounted to 11,434.[70] A letter from Judge Hoffman was quoted in which he declared, ''Not only has the flood of Chinese immigration with which we were menaced been stayed, but a process of depletion has been going on which could not be considerably increased without serious disturbance to the established industries of the State.''[71] The number of petitions and memorials from all parts of the country requesting the passage of the law was even greater than in 1882. The bill passed both houses by large majorities and was approved by the President.[72]

These amendments were effective in excluding the Chinese who were subjects of countries other than China, but did not correct the evils that arose when they attempted to establish their right to enter by a court procedure. The United States Supreme Court decided that the section of the law of 1884 which declared that the certificates specified in the law should be the only evidence permissible to establish the right of entry, did not apply to Chinese laborers who resided in this country at the date of the treaty of November, 1880, departed before May, 1882, and remained out of the country until after the passage of the amending act of July, 1884. Justice Field wrote a dissenting opinion in which he claimed that the law required that the certificate should be the only means of entry for all classes, as the law of 1884 was passed to correct abuses that attended the trial of cases admitted on parole evidence.[73]

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[68] 23 *Statutes at Large*, 118.

[69] *Congressional Record*, XV, 48th Cong., 1st Sess., pp. 3752-3777.

[70] *Ibid.*, pp. 3758-9.

[71] *Ibid.*, p. 3761.

[72] *Ibid.*, pp. 3777, 5737-8, 6171.

The Chinese were most ingenious in devising ways of evading the laws. They secured writs of habeas corpus, and gave bail bonds with worthless sureties. The courts soon became so clogged that there was much delay in trying the cases. About sixty-five per cent. of those claiming the right to enter were ordered deported, but when the decisions were rendered it was impossible to execute the orders of the court. as only about five per cent. of the subjects of these decisions could be found. The judges of the Federal courts were so overwhelmed with these cases that they found it impossible to attend to the regular business of the courts. Just prior to the introduction of the amendments of 1888, Judge Hoffman wrote that he had five hundred cases pending,[74] and, with the prospects of the passage of a law doing away with this method of entrance, the number of cases multiplied to seven thousand in nine months.[75] Many Chinese obtained an entry by the use of fraudulent certificates. Chinese returning to their native land would sell their certificates to countrymen desiring to emigrate. One of the Customs officials became a party to the fraudulent issuance and sale of these return permits.[76] The people of California were dismayed and exasperated by the discovery that the number of Chinese claiming admission was as great as, or even greater, than before the passage of the exclusion law. The following table shows the fluctuations in the immigration as affected by the different laws:

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[73] *Chew Heong v. U. S.*, 112 U. S. 536; 112 U. S. 543. Also in *Opinions and Papers of S. J. Field*, Vol. II, No. 32.

[74] *Congressional Record*, XIX, 50th Cong., 1st Sess., pp. 6568-9.

[75] *H. R. Rept.* No. 255, 52d Cong., 1st Sess., Serial No. 3042.

[76] Rept. of Spaulding, Ex. Doc. No. 103, 49th Cong., 1st Sess., Serial No. 2340. See also the San Francisco daily papers of December, 1885.

CHINESE ARRIVING IN SAN FRANCISCO.[77]

1877	9,264
1878	6,675
1879	6,950
To November 17, 1880	5,495
November 17, 1880, to August 5, 1882	45,952
August 5 to December 31, 1882	39
1883	3,014
1884	6,602
1885	9,049
1886	6,714
1887	11,572
1888 to October 1st	18,838

FEELING AGAINST THE CHINESE IN THE LATER EIGHTIES.

These wholesale violations of the exclusion laws took place at a time when the opposition to the Chinese was, if possible, greater than ever before. A number of factors contributed to this culmination of anti-Chinese feeling, the most important of which were:

1. The greater competition between white and Chinese workers.

2. The increased activity and strength of the labor organizations.

3. The long agitation had given the question undue prominence, so that all economic ills were charged to the presence of the Chinese.

4. Political conditions which made the presidential election hinge on the vote of the Pacific Coast states.

With the economic development of the state, the two races came into more intimate contact and competition. The Chinese were first brought to this country largely for the purpose of utilizing their labor in building the railroads, draining the swamps, or clearing the farm lands. As they became more familiar with their new economic environment, they were able to undertake enterprises of their own, and they also acquired the skill and the capital that made it possible for them to enter the more desirable occupations. They no longer worked in rough, isolated communities, but assembled in the cities and towns where they came into more direct contact and competition with the white workers.

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[77] *H. R. Rept.* No. 2915, p. 17, 51st Cong., 1st Sess., Serial No. 2815.

After the somewhat desultory efforts of the earlier periods, the labor organizations of the Coast were now coalescing into a powerful unified movement. There were central bodies in the chief cities of California, Oregon, and Washington, and these were federated with the San Francisco organizations, which had taken the initiative in their formation. With the development of these central bodies representing large groups of workers, the political power of the labor organizations became greater.

The need of more effective Chinese exclusion was kept constantly before the public. The Knights of Labor, who were then at the height of their influence in California, called a convention at San Francisco in November and December, 1885, for the purpose of discussing means of lessening the evils of competition with Chinese labor, and other subjects of interest to the working people. The more radical members gained the ascendency in this convention, and after indulging in much reckless talk, passed resolutions congratulating Seattle, Santa Cruz, and other cities that had expelled the Chinese, calling upon the supervisors to enforce the anti-Chinese ordinances, and to take steps to remove them outside the city limits, and making plans for a general boycott of Chinese products.[78] In the midst of the heated debates, a delegate proposed to add a resolution demanding the complete removal of the Chinese from all parts of the Pacific Coast, and especially that they be removed from San Francisco within sixty days.[79] One hundred and seven of the two hundred members of the convention voted on this resolution, which was carried by a vote of 60 to 47.

On the passage of this resolution, the Knights of Labor and the more conservative trade-unionists immediately withdrew from the convention, as they were unwilling to sanction a measure that might lead to violence. Evidently the remaining delegates had no serious intention of putting the resolution into execution; it was merely an expression of their feelings, not a definite plan of action. The Knights of Labor held a separate convention a few weeks later in which they advocated absolute exclusion of the Chinese.[80]

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[78] *San Francisco Daily Report*, December 1, 3, 5, 1885.

[79] *Ibid.*, December 3.

In March, 1886, a large state convention was held for the purpose of urging further legislation for Chinese exclusion. During the previous month a convention was held in San Jose, attended by one hundred representatives of the anti-Chinese leagues of nine counties. As a similar organization known as the Citizens' Anti-Chinese Convention was about to convene in Sacramento, it was decided to hold a joint meeting at the latter place. A lengthy memorial to Congress[81] was adopted which once more set forth the objections to the presence of the Chinese. It declared that the social, moral, and political aspects of the question were more important than the economic ones. After showing how the competition of the Chinese lowered the standard of living of the white workmen, the memorial continued: "But what is even more immediately damaging to the State is the fact that he [the workman] is kept in a perpetual state of anger, exasperation and discontent, always bordering on sedition, thus jeopardizing the general peace, and creating a state of chronic uneasiness and distrust, and apprehension throughout the entire community." The dangers of a large unassimilated element in the body politic were dwelt upon, and the greater strength of nations of homogeneous population emphasized.

The convention urged the passage of the bill recently introduced by Senator Mitchell, or in case of the failure of this bill, they recommended the adoption of any of the measures proposed by the California representatives. A boycott of all who employed Chinese or purchased goods from them was endorsed. A permanent state organization was formed, with an executive committee of three members from San Francisco, and one from each county of the state. There were present 198 delegates from San Jose and 415 from Sacramento, making a total of 618 in attendance at the joint convention.[82]

The holding of these large conventions outside of San Francisco is indicative of the more general feeling against the

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[80] *San Francisco Call*, December 20, 1885.

[81] Adopted March 11, 1886.

[82] Sen. Misc. Doc. No. 107, 49th Cong., 1st Sess., Serial No. 2346. Davis, *Political Conventions of California*, pp. 479-480.

Chinese. The smaller cities and towns of the state were repeating the earlier history of San Francisco, and had now begun to develop their Chinese quarters with the attendant evils. Many of them passed ordinances for mitigating these evils. As in the case of San Francisco, the more oppressive of these were declared unconstitutional by the courts.[63] In a number of the smaller towns where there was great unanimity of feeling, the inhabitants took matters in their own hands; they expelled the Chinese and gave them a rough notice not to return.[64] Some of these places have continued to enforce this local exclusion policy to the present time.

No doubt whatever economic evils may have resulted from the presence of the Chinese were greatly exaggerated in the public mind by the long-continued agitation, which had been necessary to secure the passage of the laws restricting immigration. The press and public speakers had explained fully to the remotest settlement just what harm could or would result from the presence of the Chinese, and there was a universal disposition to charge them with whatever economic evils vexed the times.

The presidential elections of 1880 and 1884 had conclusively demonstrated that the Chinese issue determined the electoral vote of California, and possibly of Nevada. As the strength of the two great national political parties was so nearly equal at this time, the Pacific Coast states held the balance of power. The desire to make political capital of the Chinese legislation is clearly shown in the debates on the law of 1888; the question as to which party had been most zealous in the promotion of the exclusion laws called forth much more heated arguments than did the merits of the bill under consideration.[65] The political platforms of this period all expressed a strong desire to meet the popular demand for this class of legislation, and a disposition to hurry such measures through just before election is also quite noticeable.

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[63] *Ex parte Fiske*, 72 Cal. 125, 129. *Ex parte Kuback*, 85 Cal. 275. *Bulletin*, February 16, 1886.

[64] Among the places taking such action were Eureka, Truckee, Redding, Santa Cruz, Bloomfield, Boulder Creek, Nicolaus, in California; Tacoma in Washington. Seattle attempted it, but was restrained by Federal troops.

[65] *Congressional Record*, XIX, p. 7296.

THE EXCLUSION LAWS OF 1888.

Congress was allowed no respite in the matter of Chinese exclusion. Numerous bills were introduced in 1886 and 1887. The people of the Pacific Coast were disposed to agree with Senator Mitchell of Oregon who claimed that his bill which provided for an absolute exclusion of the Chinese laborers was the only solution of the problem. This bill passed the Senate but was defeated in the House. Once more action was deferred pending the negotiation of a treaty with China. There was much delay in the ratification of this treaty, and as the time for the next presidential election approached Congress became very impatient.

Both parties were anxious to meet the indignant demands of the people of the Pacific States that something be done to stop the wholesale evasion of the Chinese exclusion laws. Without waiting for the ratification of the treaty, a law was passed September 13, 1888, which embodied the provisions of the proposed treaty, and was to take effect when it was accepted.[86] This law provided that no Chinese laborer in the United States should be permitted after having left, to return thereto, except under the following conditions: If he have a lawful wife, parent, or child in the United States, or property to the amount of one thousand dollars, or debts of like amount due him and pending settlement. A Chinaman claiming this right of return must apply to the Collector of Customs a month before leaving, and must give a description of his family or property, and permit the Collector to make a full description of his person. These descriptions were to be filed at the Custom House, and a certificate issued containing the filing number, but no descriptions, thus making its transfer more difficult. The right to return must be exercised within one year. In case of sickness an extension of the time could be had by application to the consular representative of the Chinese Government stationed in the United States at the port of departure.[87]

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[86] Act of September 13, 1888, 25 *Statutes at Large*, Ch. 1015, pp. 476-479.

As the treaty which this law was intended to put in execution was never ratified, there was some uncertainty about the validity of the law. In the *First Supplement of the Revised Statutes*,[88] and in a circular of May, 1892, issued from the Treasury Department, it was held that the act never went into effect on account of the failure of the treaty. But the decisions of the courts and the opinions of the Attorney-General have held that parts of the act are not dependent on the treaty and have a field of action.[89] The Act of 1902 in extending the action of laws then in force, included the sections of this act which had been held operative by the courts.[90]

The government of China was not satisfied with the treaty, and wished further consideration of some of its provisions. Since the law of September 13 had been made dependent on the treaty, there was great uncertainty in its application. As the Chinese were pouring into the United States at the rate of two thousand a month, and the people of the Pacific States were becoming very impatient, the representatives of both political parties in Congress were eager to amend the exclusion laws without reference to the treaty,—particularly as the time for the next presidential election was approaching. The law of October 1, 1888, repudiated all former agreements permitting the return of laborers who had left the country. No more certificates of return were to be issued and those previously issued were declared void.[91]

The courts fully sustained the validity of this refusal to recognize the certificates issued under the earlier treaties and laws. Justice Field in his opinion said that the question of whether our government was justified in disregarding its agreements with other nations was not one for the determination of the courts. He held that the power of excluding foreigners, being an incident of sovereignty, belonged to the government of the United States as a part of those sovereign powers delegated by the Constitution, and the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, could not be granted away or restrained on behalf of any one. Whatever license the Chinese laborers had obtained previous to the act of 1888 to return to the United States after their departure, was held at the will of the government, revocable at its pleasure. He pointed out that the laborers in question were not citizens of the United States, but were aliens. That the government of the United States, through its legislative branch, can exclude aliens from its territory is a proposition which he did not think open to controversy.[92]

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[87] Convention with China, December 8, 1894, Art. II, provides that the Chinese consul at the part of departure shall perform this duty. 21 *Op. Atty. Gen.* 357. 23 *Op. Atty. Gen.* 545, 582.

[88] 1 *Sup. Rev. Stat.* 625.

[89] 2 *Sup. Rev. Stat.* 141. Sections 2, 4, 15, declared invalid *U. S. v. Long Hop* (1892), 55 Fed. Rep. 58; Sec. 12 not binding, *Li Sing v. U. S.* (1901), 180 U. S. 486.

[90] Sections 5, 6, 7, 8, 9, 10, 11, 13, and 14 were included. 32 *Statutes at Large*, 176.

[91] Law of October 1, 1888, 25 *Statutes at Large* 504. President Cleveland's criticism of the act, Sen. Ex. Doc. 271-2-3, 50th Cong., 1st Sess, Serial No. 2514.

The United States Census of 1890 showed that after eight years of strenuous efforts at exclusion there had been an actual increase in the Chinese population of the country of about two thousand. The Census of 1880 reported one hundred and five thousand Chinese residents, and that of 1890 found the number increased to one hundred and seven thousand.[93] It was no longer possible to come direct to San Francisco, but new routes of entry were soon discovered. The thinly settled, poorly guarded Canadian and Mexican frontiers offered tempting opportunities for entering the forbidden land, and the Chinese soon developed a well-planned underground railroad for bringing in their countrymen.[94] It has been impossible to prevent this comparatively small immigration, which continues to the present time.[95]

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[92] *In re Chae Chan Ping* (1888), 36 Fed. Rep. 431. *Opinions and Papers of S. J. Field*, Vol. III, Doc. 20.

[93] The Census shows the Chinese population to have been as follows: 1880, 105,465; 1890, 107,475; 1900, 106,659.

[94] Ralph, J., "Leak of Chinese into the United States" (through Canada), *Harpers' Magazine*, 82, 515. H. R. Rept. No. 255, 52d Cong., 1st Sess., Serial No. 3042.

[95] *San Francisco Chronicle*, February 26, 1908, reports 26 brought to San Francisco for deportation.

RENEWAL OF THE EXCLUSION LAWS IN 1892.

The time was now approaching when the exclusion law of 1882 would expire. It was rumored that the Six Companies were collecting a large sum of money with which to fight its renewal. The whole country was once more aroused for another effort to insure the desired legislation.[96] Meetings of workingmen were held, and petitions and memorials prepared for circulation throughout the country.

The uneasiness in California was so great that the state legislators ignored the many decisions declaring their lack of jurisdiction, and passed a drastic exclusion law.[97] It provided that no Chinese person should be permitted to enter the state either by land or sea. Masters of vessels were not allowed to land them, and ticket agents must examine their certificates of residence before selling them any tickets. All the Chinese residents of the state were required to register, paying a fee of five dollars for their certificates. These fees and the heavy fines imposed for the violation of the law were expected to furnish a fund for its enforcement. This law must have been passed merely for the purpose of showing Congress what the people of California desired in the way of Chinese exclusion, for it hardly seems probable that the legislators were not aware of the fact that the state had no authority to enforce such a law. Of course this statute was promptly declared unconstitutional. The decision pointed out once more that "the power exercised belongs exclusively to the general government by virtue of its authority to regulate commerce." It was declared that the law was clearly in excess of the power of the state, as Congress had prescribed the conditions on which Chinese now here should be permitted to remain.[98] The main features of this act of the state legislature corresponded with those of the bill which Senator Mitchell had introduced some six years before in the United States Senate. Many claimed that the policy of absolute exclusion which he advocated was the only solution of the question, and his bill had been widely and favorably commented on by the papers of the Pacific Coast states.

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[96] See the *Call* and other San Francisco papers, December 1, 4, 5, 1891.

[97] *Statutes of California*, 1891, p. 186.

[98] *Ex parte Ah Cue*, 101 Cal. 197; 35 Pac. 556.

Between 1888 and 1892, the Chinese question was continually before Congress. As the time approached when the original ten-year period of exclusion would expire, a flood of petitions and memorials began pouring in from all sections of the country. Most of these were from labor organizations, and were in favor of a vigorous exclusion policy. There were, however, a small number protesting against the alleged injustice of the Chinese legislation, and advocating more generous treatment. The large number of bills dealing with the subject presented in the Fifty-second Congress were of two types: First, those which proposed to renew and extend the existing laws. Second, the more radical measures aiming to secure absolute exclusion, and a careful registration of the Chinese already in the United States. The Oregon Senators, Dolph and Mitchell, were the leading advocates of these two opposing policies, which sought recognition in the legislation of 1892.

Senator Dolph's bill extending the operation of the acts of 1882, 1884, and 1888, passed the Senate[99] and was sent to the House before that body had succeeded in coming to any agreement on the subject. Instead of acting on the Senate bill, Geary brought in a more radical measure as the report of the Committee on Foreign Affairs.[100] This bill, which had been introduced by Geary and slightly amended in the committee, was practically the same bill which Senator Mitchell had been presenting regularly during the previous seven years.[101] Representative Morrow had also made a great effort to pass a similar law two years before.[102] The registration feature had been much discussed as a means of detecting the illegal entries through Canada and Mexico. The Select Committee on the Eleventh Census had recommended a bill proposing an accurate and careful enumeration of the Chinese population, which was to be accompanied by the issuance of certificates to all such residents.[103]

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[99] *Congressional Record*, XXIII, 52d Cong., 1st Sess., pp. 33, 788, 1271, 1312.

[100] *Ibid.*, p. 1285, 2911. *H. R. Rept.*, 407, Serial No. 3043.

[101] *Congressional Record*, XXIII, p. 3480.

[102] See Morrow's letter to the San Francisco Federated Trades, published in the *Coast Seamen's Journal*, October 1, 1890. Also *H. R. Rept.* No. 2915, 51st Cong., 1st Sess., Serial No. 2815.

The Geary bill "to absolutely prohibit the coming of Chinese persons into the United States," as originally passed in the House, was much more severe in its provisions than the measure that was finally adopted.[104] As the title indicated, it proposed to exclude all classes of Chinese, for it was claimed that the concessions to merchants, students, and tourists had led to abuses. The minority report signed by three members of the committee had refused assent to the bill on account of this provision, which, it was claimed, was in violation of the treaties with China.[105] The Geary bill in all its original severity passed the House of Representatives by a vote of 178 to 43, 108 members failing to vote.

On being sent to the Senate, the bill was debated at great length,[106] and it soon became evident that the more drastic features of the House measure would not be accepted. As the time approached when the old law would expire, it was reported that large numbers of Chinese were camped along the frontiers waiting for the sixth of May, when they would move across the border. In their excitement and anxiety, the people of the Pacific Coast imagined a small army of Orientals preparing for invasion. Finally a conference was arranged between representatives of the two branches of Congress, and a measure drafted which combined certain features of their respective bills.[107] This new bill was then rushed through in time to receive the President's signature on the fifth of May, one day prior to the expiration of the old laws.

The new statute,[108] which is commonly known as the Geary Act, continued all laws then in force for a period of ten years.

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[103] *H. R. Rep.* No. 486, 51st Cong., 1st Sess. (February, 1890), Serial No. 2808.

[104] *Congressional Record*, XXIII, p. 2911.

[105] *H. R. Rep.* No. 407, 52d Cong., 1st Sess., Serial No. 3043.

[106] *Congressional Record*, XXIII, pp. 3236, 3438, 3475, 3522, 3608, 3829, 3832, 3862, 3922.

[107] *Ibid.*, pp. 3925, 4191.

[108] Act of May 5, 1892, Ch. 60, 27 *Statutes at Large* 25.

Chinese illegally in the United States were to be removed to China, or to the country of which they were citizens. The third section of the law introduced a new principle into the litigation on the subject, by throwing the burden of proof upon the persons charged with being in the country contrary to law. It provides, "That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts thereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States."[109] It was claimed that merely deporting those who entered illegally would not deter them from trying the same plan again, so the law provided that imprisonment at hard labor should precede deportation. But the courts have refused to sanction any imprisonment other than detention pending trial.[110]

Another section which met with much opposition in both the Senate and House was that which declared that no bail should be allowed on applications for writs of habeas corpus. In support of this Geary declared that over eight thousand writs of this kind had been issued in one year. The bail offered was worthless, as Judge Morrow had declared forfeited over a quarter of a million dollars of Chinese appeal bonds, and the Attorney-General had never been able to collect a dollar of the money.[111] The matter was compromised by a stipulation requiring such cases to be tried without unnecessary delay.

The much-discussed registration provision was also retained in the law. This required all Chinese laborers to obtain certificates of residence within one year. Those failing to obtain such certificates were subject to deportation, unless they could prove that their failure to comply with the law was unavoidable. The Chinese sought the advice of eminent lawyers, who assured them that this registration requirement was unconstitutional.[112] On the fifteenth of May, ten days after the time for registration had expired, the United States Supreme Court declared that this section was valid.[113]

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[109] 27 *Statutes at Large* 25, Sec. 3. The true theory is, not that all Chinese may enter this country who are not forbidden, but that only those are entitled to enter who are expressly allowed to do so. 23 *Op. Atty. Gen.*, 485.

[110] *U. S.* v. *Hing Quong Chow* (1892), 53 Fed. Rep. 233. *U. S.* v. *Wong Sing*, 51 Fed. Rep. 79. *In re Ng Loy Hoe*, 53 Fed. Rep. 914. *In re Ah Yuk*, 53 Fed. Rep. 781.

[111] *Congressional Record*, XXIII, 2915. 27 *Statutes at Large* 25, Sec. 5.

The Fifty-third Congress found itself confronted with the perennial Chinese problem, which now began to assume a somewhat ludicrous form. The more radical opponents of the Chinese had, in years gone by, frequently advocated the deportation of the objectionable Chinese population. They now had an opportunity to carry out such a plan, as only 12,243 had registered, and about 85,000 were liable under the law to deportation. While there had been a number of arrests and twenty or more convictions, there had as yet been no deportations, and there seemed to be no funds for this purpose.[114] When Secretary Carlisle was asked to send in an estimate of what it would cost to execute the law, he informed Congress that the most conservative estimate indicated that it would cost over ten million dollars to convict and deport the Chinese who had failed to register.[115] This was more than any one had bargained for, and Congress hastened to pass another bill relieving the officials from the duty of executing this portion of the law.[116]

The McCreary Act extended the time allowed for registration six months, and provided for the discontinuance of all proceedings instituted for the violation of the former act. No Chinese person who had been convicted of a felony was to be permitted to register. Each person registering must prove by one white witness that he was a resident in this country on May 5, 1892. The law also defined more clearly who should be considered merchants, and who laborers.[117]

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[112] They had opinions from Messrs. Choate, Carter, and Ashton, all of whom declared the provision unconstitutional. (*H. R. Rep.* No. 70, 53rd Cong., 1st Sess., Serial No. 3157.)

[113] Justice Gray wrote the affirmative decision, and Justices Brewer, Field, and Fuller wrote dissenting opinions. *Fong Yue Ting* v. *U. S.* (1893), 149 U. S. 698. There were a number of decisions sustaining the deportation provision, *e.g.*, *In re Ny Look*, 56 Fed. Rep. 81.

[114] *H. R. Ex. Doc.* No. 9, 53d Cong., 1st Sess., Serial No. 3150. *H. R. Rep.* No. 70, 53d Cong., 1st Sess., Serial No. 3157.

[115] *H. R. Ex. Doc.* No. 10, 53d Cong., 1st Sess., Serial No. 3150. *Sen. Ex. Doc.* No. 13, 53d Cong., 1st Sess., Serial No. 3144.

[116] November 3, 1893, Ch. 14, 28 *Statutes at Large* 7.

[117] *Ibid.*, Sec. 2, p. 8.

In 1894 a belated treaty which sanctioned these various measures was negotiated with China. This treaty was to be in force ten years, and was to be considered as renewed for a like period, unless notice of its abrogation was given by either Government within six months of the time when it would expire.[118]

In order to insure the effective administration of the laws, particularly in cases where the right of transit is claimed, and in their adjustment to the island territory of the United States, it has been found necessary to allow the Secretary of the Treasury a large amount of discretion.[119]

RENEWAL OF THE EXCLUSION LAWS IN 1902.

It was evident when the ten-year period again drew to a close that the working people had not changed in their determination to prevent any increase in the number of their Chinese competitors. The California labor organizations, which were exceedingly influential and active at this time, adopted resolutions in their central bodies and held a large convention in San Francisco for the purpose of making known their desire that there be no relaxation in the exclusion policy.

Congress renewed for an indefinite period all the laws prohibiting and regulating the coming of the Chinese.[120] It was also specified that these laws should be applicable to the island territory of the United States, and that they should prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland of the United States.[121]

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[118] December 8, 1894 (28 *Statutes at Large* 1, 1210).

[119] Act of April 30, 1900, Ch. 339, Sec. 101, 32 *Statutes at Large* 161.

[120] Act of April 29, 1902, Ch. 641, 32 *Statutes at Large*, 176.

[121] ". . . and said laws shall also apply to the island territory under the jurisdiction of the United States, and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of session or not, and from one portion of the island territory to another portion of said island territory. *Provided, however,* That said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any islands within the jurisdiction of any State or the District of Alaska shall be considered a part of the mainland under this section." (32 *Statutes at Large* 176.)

CHAPTER VII.

THE LENGTH OF THE WORK-DAY IN CALIFORNIA.

THE TEN-HOUR LAW OF 1853.

At the time of the acquisition and settlement of California, the ten-hour movement was receiving much attention from the trade-unionists of the older sections of the country, so it is not surprising to find that this was the first of the general eastern labor movements to be transplanted to California. We have already shown the promptness with which the craftsmen of the state formed organizations for bettering their conditions of labor. The numerous strikes of the early fifties were chiefly for the purpose of enforcing demands for better pay. As workmen were scarce, and the wages demanded appeared extortionate when compared with those paid in other parts of the world, employers must have been strongly tempted to require a long day's work. It was soon proposed to remedy any such tendency by the passage of a law making ten hours a legal work-day.

The act to limit the hours of labor, as originally introduced and recommended from the joint committee appointed to consider it, proposed to punish by fine and imprisonment any person who required more than ten hours for a day's work from any one in his employ.[1] When the committee brought in its report a substitute bill was offered, which simply stated that ten hours should constitute a legal day's work. In this form the measure met with but slight opposition, passing, and receiving the Governor's approval on May 17, 1853.[2] The law in its weakened form seems to have been effective. We have been unable to find any complaints of its violation, and at a later period the effectiveness of this early law was cited as a strong argument in favor of the eight-hour legislation.[3]

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[1] *San Francisco Herald*, May 11, 1853.

[2] *Assembly Journal*, 4th Sess., p. 573. *Statutes of California*, 1853, p. 187.

[3] *Alta*, February 11, 1866.

THE EIGHT-HOUR MOVEMENT OF THE SIXTIES.

The difficult period of economic readjustment immediately following the Civil War was characterized by great activity among the labor organizations all over the country. The soldiers returning from the disbanded armies often found that there were no places for them in the industries by which they had formerly earned their living, and the economic depression of this period added to the numbers of those who could find no work. There was a general feeling that a shortening of the hours of labor might create a demand for more workers, and thus furnish a remedy for the distressing economic evils of the time.

It has been suggested that the California eight-hour agitation of the sixties may have been prompted by the success of the Australian law of 1857.[4] but as the movement was quite general in the United States at this time, and there was a strong tendency in California to duplicate the activities of the labor organizations of older sections of the country, it is not necessary to seek such remote antecedents. According to the account of A. M. Kenaday, the first secretary and second president of the San Francisco Trades Union which was organized in 1863, the California eight-hour movement was started as a means of keeping alive the interest in this first central body. He declared that when it was about "to dissolve for want of encouragement," he suggested the calling of a mass meeting for the agitation of an eight-hour law. At this meeting a petition asking for the passage of such a law was adopted, and Kenaday was authorized to bring it before the local delegation of members of the legislature.[5] He also went to Sacramento as the representative of the San Francisco trade-unions to present their petition and lobby for the bill.[6] The Sacramento trade-unions, which were quite active at this time, ably seconded all the efforts of their fellow-workers in San Francisco.

Assemblyman Wilcox, "the Mariposa blacksmith," who was regarded as the champion of the working classes, presented the bill with its accompanying petition.[7] The joint committee to whom the matter was referred were deeply impressed by the petition which had been signed by eleven thousand of the citizens of San Francisco.[8] Their favorable report stated that, since the petition emanated from a large body of intelligent citizens who were presumed to know their best interests, the committee did not feel disposed even to attempt to controvert its arguments. The report continues, "As an evidence of the earnestness of the petitioners, it may be cited that the document has been submitted to large assemblages of citizens directly interested in the subject, in the cities of San Francisco, Sacramento, and Marysville, its merits freely canvassed, and after careful deliberation, adopted as an expression of their respective wishes. In the public press, also, the matter has been extensively discussed, and your Committee are not made aware of a single public journal that has opposed the measure, nor indeed has opposition raised its head from any quarter."[9] An attempt was made in the assembly to add an amendment requiring that wages be paid in gold coin, but this failed. The bill with an amendment made in committee passed the assembly by a large majority.[10]

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[4] Haskell, in McNeill, *The Labor Movement, etc.*, p. 608.

[5] *Pacific Union Printer*, December, 1890, speech of Kenaday.

[6] *Ibid.* McNeill, *Labor Movement*, etc., p. 608.

A few days later the bill was attacked in the San Francisco *Bulletin*. The editor realized that the extraordinary labor conditions of California could not be maintained, and it is evident that his forceful statement of unwelcome truths made a strong impression on the legislators. He declared that it was not probable that the high rate of wages paid in California could be maintained, as the inflation of the currency had increased prices, and the wages paid here were higher than anywhere else in the world. He estimated that the reduction in hours demanded was equivalent to a further increase in wages of twenty-five per cent. He claimed that there was no branch of business which afforded a margin of profits from which to pay this increase, and that such a reduction in hours must be followed by a corresponding decrease in the earnings of the workers. The difficulty of competing with places having a much longer workday was emphasized, and it was asked, "Is it prudent for California,—considering the fact that the price of labor is already so high that manufactures struggle for existence, while millions of acres of rich virgin soil cannot be cultivated,—to lead every other State in the Union on this labor question?" The workingmen were warned that wages were destined to decline, and advised to make the most of their present advantages.[11]

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[7] *Sacramento Daily Union*, January 25, 1866; *Alta*, January 25, 1866. *Assembly Journal*, 16th Sess., p. 252.

[8] *Alta*, June 4, 1867. (Speech of Wilcox.)

[9] *Assembly Journal*, 16th Sess., p. 304.

[10] *Ibid.*, p. 317.

This was the first general labor movement in California, and the accounts of the demonstrations in support of the eight-hour law indicate that at this early date the working people of the state were quick to respond to an appeal for united efforts to promote their class interests. The resolutions adopted at the San Francisco mass meeting claimed that this law had the overwhelming support of the majority of the people of the state. They declared, "That a spontaneous rising of the workingmen throughout the State, and their prompt rally to the support of their rights, and the spirit here displayed, sufficiently attest the great importance attached to this question. The workingmen of California, for the first time in the history of the State, ask and petition the legislature to pass one law for their direct benefit." It was argued that the success of the earlier ten-hour law, and of the eight-hour laws of Australia and New Zealand, was sufficient evidence of the value of such legislation. Should the law prove injurious, the clause allowing contracts for a longer workday provided an easy remedy.[12]

The argument claiming that it would be impossible for California to develop her industries if the conditions of labor varied greatly from those of other parts of the country seems to have made a strong impression on the state senators. They added an amendment to the assembly bill which provided that the California eight-hour law should take effect when Massachusetts passed a similar measure.[13] This killed the bill; its friends permitting it to die on the files.

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[11] *Bulletin*, February 6, 8, 1866.

[12] The meeting was presided over by Henry S. Loane, the chairman of the eight-hour committee of the Trades Union. He claimed that the petition against the law which had been recently sent to Sacramento had only eighteen signatures, and that it had been promoted by a manufacturer who employed Chinese labor. Among the signers were a junk dealer and also several capitalists. The *Alta* reports the presentation of a remonstrance signed by "sundry mechanics of San Francisco," a few days after the mass meeting. (February 15, 1866.) A delegation of members of the state legislature, including Wilcox, the sponsor for the bill, were present at the meeting. *Alta*, February 11, 1866.

After the failure of the eight-hour law in the legislature, many of the workingmen determined to obtain the shorter workday by the collective bargaining of their trade-unions. The building trades, particularly the house carpenters, led in the eight-hour demonstrations of this time. In April, 1866, as soon as it became evident that the law would not pass, the carpenters gave notice that on June 3, 1867, they would demand the eight-hour day.[14] The other building trades also set dates for the inauguration of the new system. The journeymen ship and steamboat joiners gave notice that on January 1, 1867, they would adopt the new time schedule, the bricklayers set February 1, 1867, as their date, and the stone masons March 1.[15] It is difficult to get information about any labor movement among the miners, but a letter from Austin, Nevada, dated January 28, 1867, states that the eight-hour system was being adopted to a great extent among the miners and that they hoped it would become universal, both in the mines and among laborers and mechanics.[16]

While there was general sympathy with these efforts to shorten the workday, a number of the San Francisco trade-unions realized that they were not prepared to join in the demands for an eight-hour day. The Typographical Union found that it could not endorse the movement, and, though willing to send a delegate to the Mechanics' State Council, passed resolutions stating that, while its members sympathized with the efforts of fellow-mechanics, they felt that the conditions of their trade would not permit the adoption of an eight-hour system.[17] The machinists and other organizations of the metal workers also found themselves unable at this time to make so radical a change in their working hours.

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[13] *Senate Journal*, 16th Sess., p. 673. See also *Alta*, January 23, 1868. (Speech of Lupton.)

[14] *Bulletin*, June 3, 1867; report of the meeting says the resolution was adopted April 9, 1866. See also *Alta*, June 4, 1867.

[15] *Industrial Magazine*, January, 1867, p. 48.

[16] *Ibid.*, February, 1867.

The first half of 1867, the period during which the shorter work-day was inaugurated in many of these trades, was marked by great activity among the trade-unions. The house carpenters, who had given themselves a year in which to prepare for the change, enlisted all of their craft in a House Carpenters' Eight-hour League which claimed a membership of eighteen hundred. The workingmen's convention called by the Industrial League held meetings during the three months prior to the date set for the change.[18] As the day approached, several large mass meetings were held to complete the education of public opinion in support of the new system.[19] The speakers at these meetings were the leaders of the workingmen's organizations, who devoted their oratory to the two main topics of interest to their followers, namely, Chinese exclusion, and the eight-hour workday. A. M. Winn, the president of the Eight-hour League, was particularly optimistic about the benefits that must follow the establishment of the new system. He said, "If the house carpenters succeed in establishing among themselves the eight-hour system,—and I hope and believe they will,—it will be but a few weeks until eight hours will be as regularly a day's work as ten hours have been heretofore." He claimed that the line of distinction among men was drawn by education, and that class distinctions would be destroyed when the workingmen had the leisure to cultivate their minds. He believed that when the new system was once established, schools for men would spring up as fast as they were wanted, that all would be furnished with the necessary means of improvement.

June 3, 1867, the date set for the celebration of the shorter work-day, may be regarded as the first California Labor Day. Some of those who were unfriendly to the movement predicted a disorderly demonstration. The editor of the *Alta* declared that "fiery and indiscreet orators" had in all probability "fumed up excitement";[20] but on the day following this first labor holiday he had the grace to acknowledge that nothing could have been "more orderly, quiet, and pleasant" than the demeanor of the celebrants.[21] Two thousand and sixty-six[22] trade-unionists who claimed the shorter working-day marched in the procession. The order in the line of march, which was determined by priority in the adoption of the eight-hour day, was as follows:[23] Ship and Steamboat Joiners' Association, Bricklayers' Protective Union, Laborers' Protective Benevolent Association, Journeymen Lathers, Riggers, Gas Fitters, House Carpenters. Assemblyman Wilcox, who loved to pose as "the Mariposa blacksmith," and who was then at the height of his popularity, was chosen as the orator of the day. He told the history of the eight-hour bill which he had recently championed in the state legislature, and with the assistance of the other speakers, did ample justice to this and the Chinese question.

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[17] Minutes of meetings of December 30, 1865; January 27, April 27, 1867; February 28, 1870.

[18] The San Francisco papers report meetings from April 1 to June 28.

[19] *Alta*, June 2 1867. *Bulletin*, May 15.

Evidently the carpenters planned all the details of this early eight-hour movement with great care, for at the meeting it was announced that a committee had been appointed to assist those thrown out of work, and to see to it that no one suffered for the necessities of life while the new system was being started. The result of this thorough preparation and careful education of public opinion was the peaceful establishment of the new time-schedule for this large group of workers. In a few instances contractors attempted to defeat the movement by offering extra pay for ten hours' work, but on the whole the eight-hour day was fairly well established in the trades participating in the movement.

One of the difficulties of the early labor movement was the lack of sufficient feeling of class interests to prevent the formation of counter-movements among some of the workmen. In July a Ten-hour Labor Association was formed. This was not strictly a workingmen's organization, as it proposed to admit capitalists and master-builders. A meeting was held and resolutions adopted, but the association appears to have met with little success and soon dropped out of existence.[24]

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[20] *Alta*, June 2, 1867.

[21] *Ibid.*, June 4, 1867.

[22] This is the count made by the representative of the *Alta*.

[23] *Alta* and *Bulletin*, June 4, 1867.

It is evident from the bitter complaints of the effects of the eight-hour system in the papers opposed to it that it was generally maintained in the building trades, and probably introduced among other groups of workers. After visiting the architects of the city, a reporter of the *Alta* claimed that he found many instances where plans to build had been abandoned because of the increased cost of labor.[25]

The sessions of the workingmen's convention not only culminated in the great eight-hour celebration of June 3, but also in a successful political movement by which a majority of their candidates were chosen in the San Francisco primary election of June 5. The workingmen's convention had passed resolutions to the effect that the men there represented would vote for no candidate who would not pledge himself to the support of the eight-hour movement.[26] As the convention appointed a large committee of its delegates who were to carry on a systematic correspondence with the workingmen of other portions of the state,[27] it is probable that this pledge was widely circulated. These efforts immediately bore fruit; the three party conventions of 1867 all inserted strong eight-hour resolutions in their platforms.[28] With this good preliminary work, the passage of the eight-hour law in the next session of the legislature was assured.

The new eight-hour bill which had been thoroughly discussed in a meeting of workingmen in December, 1867, was presented by Assemblyman O'Malley. The judiciary committee of the assembly, to whom the bill was referred, reported a substitute measure with a recommendation for passage. This act provided that eight hours should be held a legal day's work in all cases within the state unless otherwise expressly stipulated between the parties concerned. No one having minors in his employ was permitted to require more than eight hours' work in one day. Agricultural, horticultural, viticultural, and domestic labor were excluded from the operation of the law.[29] This last section was proposed by Dwinelle, and added in committee. It was claimed that it was often necessary to work overtime to save the crops, and that this class of labor had leisure at other times in the year.[30]

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[24] *Alta*, July 20, 1867.

[25] *Ibid.*, July 22, 1867.

[26] *Bulletin*, April 3, 1867.

[27] *San Francisco Daily Times*, April 10, 1867.

[28] Davis, *Political Conventions of California*, pp. 249, 260, 265-6.

On the floor of the assembly, O'Malley introduced as an amendment to the committee's substitute measure the section of his original bill which they had omitted.[31] This provided that eight hours should constitute a legal day's work where the same is performed under the authority of any law of the state, or under the authority or direction of any officer of the state, whether acting in his official capacity, or by authority of any county or municipal government, and that a stipulation to that effect should be made a part of all contracts for such work.

The bill was debated at some length in the assembly and senate.[32] In both bodies efforts were made to recommit, and to strike out or to amend the section dealing with child-labor. Evidently the speakers were more concerned with the questions as to which party or person deserved most credit for the measure, and as to whether they were fulfilling the expectations of the workingmen, than with the possible effects of the bill. Such economic theory as was brought to bear on the subject was of a pronounced *laissez faire* type. One member declared that, if he had read political economy to any effect, it had taught him that the relations of capital and labor, if left to themselves, would regulate themselves, and that all spasmodic efforts to regulate them by special legislation would in the end prove futile. However, notwithstanding his theories, he was willing to vote for the measure if its friends thought it would do any good.[33] As all parties had pledged themselves to the eight-hour legislation, there was no difficulty in securing the necessary majority for the passage of the bill, and it was approved by Governor Haight on February 21, 1868.

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[29] *Statutes of California*, 1867-8, p. 63. *Alta*, January 23, 1868.

[30] *Sacramento Daily Union*, January 23, 1868.

[31] *Assembly Journal*, 17th Sess., pp. 221, 312, 477.

[32] *Sacramento Daily Union*, January 22, 23; February 14, 1868. *Alta*, January 23, 1868.

The following day had been set aside by the San Francisco labor organizations for the celebration of this successful issue of their eight-hour campaign.[34] The Oakland trade-unions sent over a large delegation to swell the ranks of the torchlight procession,[35] which was the favorite form of celebration at this period. A number of members of the state legislature contributed to the oratorical features of the program. As in the procession of June 3, 1867, the order of marching was determined by the date of adoption of the eight-hour day.[36]

EFFORTS TO ASSIST THE PASSAGE OF THE FEDERAL EIGHT-HOUR LAW.

The California trade-unionists also interested themselves at this time in the efforts that were being made to secure the passage of a Federal eight-hour law. The Mechanics' State Council, which was organized in the fall of 1867 for the purpose of giving the eight-hour movement wider scope, undertook to have petitions favoring the passage of a national eight-hour law circulated for signatures throughout the State. San Francisco was divided into fifteen districts to be canvassed by members of the council. Copies of the petition and the resolutions of the council were sent to members in other places, or to postmasters with the request that they be given to eight-hour men for circulation.[37]

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[33] Speech of Assemblyman Tully, *Sacramento Daily Union*, January 23, 1868.

[34] San Francisco papers, February 21 to 24, 1868. The *Times* gives a particularly good account.

[35] The Oakland delegation was reported to number about 450. This is the first account we have found of the participation of the Oakland trade-unionists in a San Francisco celebration. It was quite common in later periods of the labor movement.

[36] Each organization carried a transparency giving the date when its members had adopted the eight-hour day. These dates as reported by the *Times* of February 24, 1868, were as follows:
December, 1865—Ship Caulkers.
January, 1866—Ship Wrights, Ship Joiners.
March, 1866—Ship Painters.
August, 1866—Plasterers.
February, 1867—Bricklayers, Laborers' Protective and Benevolent Association.
March, 1867—Stone Masons.
May, 1867—Stone Cutters, Lathers.
June, 1867—House Carpenters Nos. 1 and 2, Riggers, Wood Turners, Metal Roofers, House Painters.
July, 1867—Plumbers and Gas Fitters.

In August, 1869, A. M. Winn, the president of the Mechanics' State Council, went to Washington, where he sent each member of Congress a copy of the resolution of the council requesting that Congress pass a law positively requiring that the public work be done at eight hours for a day's work, and making it a penal offense for its officers and contractors to evade this provision. While in Washington, Winn was elected Chairman of the National Eight-hour Executive Committee, an organization composed of officers of state and national associations of mechanics. This committee made an unsuccessful attempt to secure an amendment to the Federal eight-hour law requiring the public work to be done with the eight-hour working-day, whether done by day labor or by contract.[38]

ENFORCEMENT OF THE CALIFORNIA EIGHT-HOUR LAW.

The new law was to take effect sixty days after its passage. On May 7 the laborers engaged in grading the streets of San Francisco struck to secure a reduction of their working hours so that they would conform to the law.[39] The work was being done by contractors whose bids were based on the older ten-hour system. They were determined not to adopt the shorter working-day, though they offered to pay the men by the hour and let them work as long as they chose. The laborers refused to accept this compromise, and tried to prevent others from contracting for the extra hours. In some parts of the city the work on the streets was suspended, and in others the new men worked under guards, but the strikers attempted no violence.[40]

We have seen that the ship caulkers and carpenters were among the first of the organizations to secure the shorter work-day, and these unions were also the first to be met by a vigorous counter movement on the part of their employers. It was easy to engage men at New York or other Atlantic ports who would gladly work for less pay and longer hours than were demanded in California,[41] particularly as this was a period of great economic depression in the East, and there were many unemployed men. The shipowners imported men for their own service, and granted special rates to facilitate the importation of a new supply of labor. Following the disbandment of the great armies of the Civil War, there were many who preferred to make a new start in the West, so there was a large influx of men at this time. Within a week of this strike the *Alta* reports, "Several thousand able-bodied men from Pennsylvania and New York, accustomed to labor upon public works, have arrived here within a few days by steamer, and went to work with alacrity at the wages offered. . . . Many arrived on Sunday and went to work on Monday. The contractors say they are unusually good workmen."[42]

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[37] *Alta*, November 30, 1867.

[38] Winn, *Valedictory Address.*

[39] *Alta*, May 8, 1868.

[40] *Ibid.*, May 10, 1868.

The strikers did not have to suffer for their devotion to the cause of the shorter working-day, for there was still plenty of work in California. At this time the Labor Exchange[43] continually reported more orders for labor than could be filled. The members of the Eight-hour League made every effort to induce the newcomers who had accepted the street work, and also those who applied to the Labor Exchange, to demand the shorter working-day. The general financial depression gradually began to make itself felt in California, so there was an increasing disposition to take work on whatever terms were offered.

In earlier chapters of this book we have given an account of the economic changes that took place at the time of the opening of the overland railroad. The greater competition with the East, the increased number of new arrivals, thousands of men released from employment in building the railroad, and the vast increase of the Chinese immigration, resulted in a great surplus of labor. For the next fifteen years unemployed—sometimes hungry—men gathered in the streets and vacant lots of San Francisco to discuss the need of work by which they could earn their daily bread, and to grow bitter in the contemplation of the extravagant displays of great wealth by their more fortunate fellow-citizens.

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[41] *Alta*, October 5, 1868.

[42] *Ibid.*, May 13, 1868.

[43] This was a free employment agency supported by the city and state. See later chapter on employment agencies.

It soon became evident that the workingmen would have a severe struggle to retain the advantages that had been so easily won. Early in August, 1869, the California Planing Mills gave notice that they would no longer employ men under the eight-hour rule. Their employees refused to work for ten hours a day and the mills closed for the lack of workmen. On August 3 the Eight-hour League held a meeting to consider the situation. Resolutions were passed approving the course of the members in refusing to work ten hours, and commending those who had declined to accept an increase of wages for additional hours of service. They agreed that members of the League would refuse to "put up work gotten out at the California Mills from and after the day they commenced working their men ten hours per day." The League also resolved to furnish a stamp to all mills running on the eight-hour plan, so that they would be able to identify the work of the ten-hour mills.[44]

After a few days of idleness, the California Mills were able to resume work with ten-hour men. The papers report that "At the opening of the works there were large numbers of the members of the Eight-hour League present, who used their utmost endeavors to persuade the ten-hour men to quit, assuring them that their expenses would be paid, and that next week they could have plenty of employment under the eight-hour system in a mill about to be started by the League."[45] But they were unsuccessful, and so this first break from the eight-hour day prepared the way for greater losses that were inevitable in the period of business depression upon which the industries of the state were entering.

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[44] *Bulletin*, August 3, 1869.

[45] *Alta*, August 5, 1869.

It was a losing fight against economic forces which they could not control, yet the California workingmen relinquished none of the advantages which they had gained without a vigorous contest. On August 20 a crowded mass meeting was held for the purpose of renewing the pledges of allegiance to the eight-hour working-day, and expressing indignation against those who were attacking it.[46] The speakers protested against the disposition to attribute all the economic evils of the times to the eight-hour rule. Some one remarked that he expected to find the recent plague and earthquake that had afflicted the city charged to that cause.

In the following October a decision of the California Supreme Court paved the way for the defeat of the eight-hour law by those who contracted for the public work. The Board of Supervisors had awarded a contract for street grading to a man named Drew. When it came to the execution of this contract, the Superintendent of Streets insisted on inserting a clause which not only stipulated that the work be done on the eight-hour basis, but also provided that the pay of the contractor should be forfeited if he worked his men for a greater number of hours per day. The contractor refused to sign such an agreement, and offered instead to insert a clause to the effect, "And it is hereby expressly stipulated that eight hours' labor shall constitute a legal day's work for all labor to be performed under this contract." The Superintendent of Streets refused to execute the contract on these terms, and so Drew applied to the District Court for a mandamus compelling the execution of the contract. This court sustained the Superintendent of Streets, but on appeal to the Supreme Court the decision was reversed, and the lower court directed to issue the mandate. The Supreme Court decision was not a unanimous one; of the four judges who wrote opinions, two affirmed the decision of the lower court, the fifth concurring in the reversal without writing an opinion.[47]

Justice Sawyer, in delivering the opinion of the court, based his argument on a strict interpretation of the actual language of the statute, which merely required the insertion of a stipulation that eight hours shall constitute a legal day's work. The statute allowed contracts for a longer working-day, and did not provide a penalty for its violation for those engaged on public work.

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[46] *Alta,* August 21, 1869.

[47] *Drew* v. *Smith,* 38 Cal. 325.

The concurring opinion of Justice Sanderson stated this right to contract for a longer working-day in yet stronger terms. He said that he did not understand the words of the statute as intending to prohibit, either directly or indirectly, the laboring man from working more than eight hours in one day if he desires or his necessities require him so to do. He thought such a prohibition might be considered an unwarrantable and unreasonable interference with the natural rights of persons as enumerated in the constitution. There was nothing in the statute to prevent a man working extra hours for more pay.[48]

Justices Sprague and Crockett based their arguments on the manifest intent of the legislature in the enactment of the second section of the law. If the right of contracting for longer hours was intended to apply to public work, there was no need of adding the second section, as the whole subject would have been covered in the first providing that eight hours shall be a legal day's work unless a contract for a longer day had been made. They claimed that it was the manifest intent of the legislature to prohibit public officers from entering into any agreement by which the hours of a day's labor should be extended beyond the limits fixed in the law. Justice Sprague also held that it was competent and proper that, as security for the performance of such stipulation on the part of the contractor, a penalty should be prescribed in the contract itself for the failure to comply with the terms of the stipulation.[49]

As a result of this decision the eight-hour law of 1868 became little more than the enunciation of a principle, or a recommendation without power of enforcement. However, the chances of its enforcement in a part of the public work were increased by the passage in 1870 of a law requiring that "All work done upon the public buildings of this State shall be done under the supervision of a superintendent or state officer or officers having charge of the work, and all labor employed on said buildings, whether skilled or unskilled, shall be employed by the day, and no work upon any of said buildings shall be done by contract.''[80]

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[48] *Drew* v. *Smith*, 38 Cal. 329.

[49] *Drew* v. *Smith*, 38 Cal. 332.

This law was recommended by the committee on public institutions, and promptly passed under a suspension of the rules.[81] Shortly after the passage of the law an opportunity came for its enforcement. The Regents of the State University had advertised for bids on a building to be erected. The Mechanics' State Council protested vigorously and had decided to get out an injunction, when the Regents, after consulting with the attorney-general, changed their plans to conform with the new statute.[82] For a while the workingmen were watchful in the enforcement of the law, but as the different trades were gradually forced by the hard times to yield the advantages gained during the sixties, the efforts to enforce the laws in public works were relaxed, so that the eight-hour requirement was often ignored.

LOSS OF THE SHORTER WORK-DAY, 1870-1877.

The advances of the forces of labor may be accompanied by brass bands and torchlight processions, but the retreats are conducted under cover, with as much secrecy and quiet as possible. Between 1870 and 1877 all the trades in which the eight-hour rule had been established were obliged to return to the longer work-day. In a few cases the change was the result of a strike or lockout, but in most instances the necessities of the workmen and their employers brought about a change by private agreement. The *Bulletin* describes the process which was well under way in 1870: ''Work among artisans who are or have been united in the Eight-hour Leagues is uncomfortably slack, and in many instances the workmen acknowledge the necessity for a change. Contractors hold consultations with workmen, and after amicable discussion, matters are satisfactorily adjusted.''[53] The bricklayers held out until 1875, then met defeat in a controversy over the work on the Palace Hotel. The contractor offered them six instead of five dollars a day if they would work the extra two hours.[54] But they refused this offer, and one hundred men were brought out from the East to take their places. Haskell says the plasterers lost their eight-hour day in 1877.[55] It must have been quickly regained, for in later accounts they claimed that they had retained it through this period.[56]

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[80] *Statutes of California*, 1869-1870, p. 777. Pol. Code, 3233. The law applies only to state buildings. *Babcock* v. *Goodrich*, 47 Cal. 510.

[81] *Assembly Journal*, 18th Sess., p. 710.

[82] The Attorney General declared the statute constitutional. See Winn, *Valedictory Address*.

CONTINUED AGITATION IN FAVOR OF THE EIGHT-HOUR DAY.

In giving up their shorter work-day the men felt that they were yielding a temporary concession to the unfortunate economic conditions of the times; they hoped to avail themselves of the first favorable opportunity to regain the lost advantages. The educational work was continued so that when the time arrived a large number of workmen would be prepared to make the change. The Mechanics' State Council organized a new Eight-hour League in 1872, of which all mechanics and laboring men could become members by signing the following pledge: "I have signed my name to this obligation and thus become a member of the Eight-hour League. I do pledge my sacred honor that when the Mechanics' State Council shall fix a time for my trade to commence working eight hours a day, I will quit work at my trade until my employer shall accept eight hours for a day's work, or until the council shall release me from the obligation. I will promptly attend all general meetings of the league that may be called by the council and will abide by and support its rules, regulations, and by-laws.''[57] An executive committee of the council was appointed to circulate this pledge. The organizations represented in the council also undertook to obtain members throughout the state.[58]

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[53] *Bulletin*, July 19, 1870.

[54] *San Francisco Daily Report*, May 11, 1886.

[55] Haskell, in McNeill, *The Labor Movement*, etc., p. 608.

[56] *Examiner*, May 2, 1890, p. 3.

[57] *Bulletin*, June 11, 1872.

[58] *Alta*, August 9, 1875.

It is interesting to find that at this early date the California trade-unionists suggested a plan for a national eight-hour movement similar to the one carried out by the American Federation of Labor fifteen years later. The difficulties of enforcing the eight-hour day in 1866 to 1870 had shown the necessity of a more general effort to secure the shorter work-day. The Mechanics' State Council sent a communication to the Industrial Congress, meeting in Chicago in 1875, requesting that the centennial anniversary of the Declaration of Independence be designated as the day for the inauguration of a national eight-hour system of labor.[59] This request was complied with; J. H. Wright, the president of the Industrial Congress, wrote saying that July 4, 1876, had been designated as the day when the trade-unions in all the large cities of the United States were to demand the eight-hour day. The letter recommended that the workmen start upon the principle that less wages be taken, rather than permit themselves to be deprived of the necessary time for social and mental improvement.[60]

In accordance with this plan the Mechanics' State Council passed resolutions endorsing the action of the Industrial Congress, and recommending that the mechanics of the state prepare for this occasion by "active, energetic, and harmonious organization," and that journeymen be called upon to sign a pledge of honor, promising that they would not work more than eight hours after that date. These resolutions declared, "We are well convinced from observation that the perfect and immense amount of labor-saving machinery now in use makes it impossible to keep our labor force employed more than eight hours per day. It is a national necessity that workingmen have more time for study and mental improvement, so as to insure a greater degree of intelligence for their personal advantage and the general good of the country."[61] At a subsequent meeting Winn recurs to this explanation of the economic depression of the time. He said, "Splendid labor-saving machinery, long days of ten and twelve hours, with hard work of men and women in manufactures of various kinds, have produced more than can be consumed by the people; hence thousands are out of employment waiting for the consumption of what their hands have produced."[62] It is evident that, aside from its benefits to individual workmen, the eight-hour work-day was believed to be the solution of the problems of the unemployed and the general economic depression of the time.

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[59] See action of the house painters in the same number of the *Bulletin*.

[60] *Alta*, August 9, 1875.

[61] *Ibid.*, Res. 4 and 5.

But little effort seems to have been made to carry out this plan to inaugurate the shorter work-day on the centennial Fourth of July. San Francisco was crowded with men whose necessities made them eager to get work on any terms. All other labor interests were forgotten during the great anti-Chinese demonstrations which absorbed the attention of the city at this time.

THE EIGHT-HOUR LAW ADVOCATED BY THE WORKINGMEN'S PARTY.

The shorter work-day was a frequent subject of discussion in the fervid oratory of the sand-lot meetings. As we have pointed out, the eight-hour law had from its inception been looked upon as a means of furnishing employment to the large number of idle workers, and the movement had owed much of its popularity to the hope that it would help solve the distressing problem of the unemployed that had oppressed the country since the Civil War. The sand-lotters were therefore disposed to attribute their misfortunes partly to the failure to enforce the law, and so furnish work for a larger number of men. The strengthening of the eight-hour law was one of the objects which the Workingmen's Party emphasized most strongly; their convention including in its resolutions the declaration:

"Sec. 8. All labor on public works, whether state or municipal, should be performed by the day, at current rates of wages.

"Sec. 9. Eight hours is a sufficient day's work for any man, and the law should make it so."[63]

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[62] *Alta*, January 14, 1876.

[63] Davis, *Political Conventions of California*, p. 380.

THE EIGHT-HOUR PROVISION OF THE NEW CONSTITUTION.

This, like other reforms demanded by the Workingmen's Party, found a place in the new constitution. The eight-hour sections proposed in the convention went much further than the measure finally adopted. Beerstecher, of San Francisco, wanted the constitution to declare it a misdemeanor for any person, firm, or corporation to employ any one at manual labor for more than eight hours in one day, or forty-eight hours in one week.[64] Others wanted the eight-hour rule to apply to corporations, and to all public work, whether state or municipal. In connection with the eight-hour requirement, it was proposed to stipulate that all public work be done by the day instead of by contract.[65] The section finally adopted by a large majority did not go any further than the law of 1868, as it merely provided that, "Eight hours shall constitute a legal day's work on all public works."[66]

TRADE-UNION EFFORTS TO SHORTEN THE WORKING-DAY, 1882-1890.

The California trade-unionists did not again undertake an eight-hour movement of such general scope as that of the sixties, but, as a heritage from the earlier struggles, they held fast to this standard for the length of the work-day. With each recurrent period of prosperity, different groups of workers have seized the opportunity to press a little nearer the goal, until at the present time a very large percentage of the trade-unionists of the state have already attained, or have definite expectations of attaining, this standard work-day.

As the conditions of work in the building trades have always been found peculiarly favorable to the collective bargaining of the trade-unionist, they continued to lead the efforts to shorten the working hours. With the return of prosperity in the eighties, the carpenters re-organized and, as in previous years, the shorter work-day soon became the chief object of their endeavors. The first move was for the eight-hour day on Saturday. This was achieved without opposition on September 1, 1882. On February 9, 1883, a resolution was passed to the effect that after May 1 they would abolish piece-work and adopt the nine-hour day. On March 30 they held a mass meeting in the interest of their movement.[67] The new time-schedule went into effect on May 1 with very little opposition.[68] The Los Angeles carpenters obtained the nine-hour day a year later.[69] At about this time a number of the other building trades succeeded in obtaining this reduction in their working hours.[70]

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[64] *Debates and Proceedings of the Constitutional Convention of California*, p. 92.

[65] *Ibid.*, pp. 177, 262, 560, 1422, 1423.

[66] Constitution of California, Art. 20, Sec. 17.

The Knights of Labor were quite active at this time in the formation of organizations among the working people of the State. Their platform adopted in 1884 contained a declaration in favor of the eight-hour work-day,[71] and no doubt it was a subject of frequent discussion in their educational meetings.

The eight-hour day was also one of the earliest objects of the American Federation of Labor. The next important eight-hour campaign in California was a part of the national movement planned in the 1888 meeting of the Federation.[72] At this meeting it was recommended that eight-hour leagues be organized in all parts of the country for the purpose of carrying on an educational campaign in preparation for the general adoption of the shorter work-day. May first, 1890, was set as the date for the change.

In accordance with this plan, a systematic agitation in favor of the shorter work-day was undertaken in California. A vigorous campaign was started in Los Angeles a few months prior to the organization of the San Francisco Eight-hour League.[73] The latter grew out of a mass meeting called by the

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[67] *Call*, March 31, 1883, 3-6; April 28, 1883, 3-5.

[68] *Organized Labor*, February 24, 1900.

[69] *Examiner*, April 7, 1889.

[70] I have been unable to find just when they made the change. Some may have had it sooner. The *Third Biennial Report of the Bureau of Labor Statistics*, p. 134, reports the nine-hour day in a number of these trades when others were working ten hours. For the painters, see *Call*, May 10, 1883, 3-6.

[71] *Second Biennial Report, Bureau of Labor Statistics*, pp. 17-18.

[72] *Report of St. Louis Meeting, American Federation of Labor*, pp. 9, 30.

[73] *Examiner*, March 31, April 7, 1889.

Federated Trades Council on June 2, 1889.[74] The league, of which Joseph F. Valentine was president, was composed of delegates from the different unions and was purely educational in its aims.[75] At this time the San Francisco central body was supposed to represent the labor organizations of the entire Pacific Coast, and it made a much greater effort to assist the labor movement outside the city than it now does. Largely through the influence of the San Francisco league, the agitation in favor of the shorter work-day became quite general.[76] Hundreds of dollars were spent in the purchase of eight-hour literature, and branch leagues were organized in neighboring states and territories. The Eight-hour League continued its meetings as a separate organization for a year, during which its members lost no opportunity to interest their fellow-workers in the movement. It made a special effort to insure the success of the Labor Day celebration of the September following its inception, and held a mass meeting in February, 1890, in preparation for the prospective change.

May 1, 1890, was set apart for labor demonstrations in both Europe and America. Its approach was dreaded as a probable day of riot and bloodshed in the Old World, but in the great cities of the United States the efforts of the workingmen to better their condition met with less opposition, and were not the occasion for an apprehensive mustering of extra police and military protection. In California this May-day celebration created little excitement and no apprehension. In most instances the trades that had decided to adopt the shorter day at this time had already come to agreements with their employers, so there were no large strikes to mark the day.

In San Francisco only a few of the building trades[77] and the brewery workmen were prepared to demand a reduction in their hours at this time, though the president and some of the most active members of the Eight-hour League were metal trade workers. It was reported soon after the inauguration of the eight-hour campaign in Los Angeles that a large number of the contractors were willing to grant the reduction in hours,[78] so it is evident that the change was made there without friction. Such was also the case in San Francisco and Oakland.[79] Over ninety per cent. of the San Francisco contractors agreed to the reduction in hours without decrease of pay. It was reported that not more than fifty carpenters, both union and non-union, were obliged to resort to a strike to obtain their demands.[80] The plumbers and gasfitters were also granted the shorter day on May 1. The brewery workmen had an organization with branches in California, Oregon, and Washington. Their hours had been very long—from ten to thirteen per day. They succeeded in enforcing a demand for a nine-hour day at this time.[81]

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[74] *Coast Seamen's Journal*, Minutes of Federated Trades Council, May 22, 27, June 5, 1889.

[75] *Ibid.*, July 2, 1889, February 26, 1890.

[76] Article by Valentine, *Examiner*, May 4, 1890, p. 6.

[77] The United Brotherhood of Carpenters and Joiners were selected by the American Federation of Labor as the organization best prepared to make the change.

The Eight-hour League was not continued as a separate organization after the closing of the special campaign for the shorter working-day. The constitution of the Federated Trades Council was amended so that there would be a standing eight-hour committee, and the work of the League was transferred to this committee.[82]

RENEWED EFFORTS TO ENFORCE THE EIGHT-HOUR LAW ON PUBLIC WORKS.

The interest in the eight-hour movement, and the strength and influence of the labor organizations, led to a renewal of the efforts to enforce the state constitution and laws which required the eight-hour day for those employed on public works. The State Labor Commissioner reported frequent violation of these laws. The contractors either boldly proclaimed that the laws did not apply to them, or hired men by the hour and by this legal fiction evaded the law.[83]

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[78] *Examiner*, April 7, 1889.

[79] *Ibid.*, May 2, 1890.

[80] *Ibid.*, May 4, 1890, p. 6.

[81] *Ibid.*, May 2, 1890, p. 2.

[82] *Coast Seamen's Journal*, Minutes Federated Trades Council, September 17, October 1, 1890.

[83] *Second Biennial Report, Bureau of Labor Statistics*, pp. 325, 327, 339, 340. Compare with the *Seventh Biennial Report* of 1895-6, p. 92.

An eight-hour ordinance was passed in Los Angeles which declared, "It shall be unlawful for any contractor, by himself or through another, when having labor performed under any contract with the city, to demand, receive, or contract for more than eight hours' labor in one day from any person in his employ or under his control, with the promise or understanding that such person so laboring over eight hours shall receive a sum for said day's work more than that paid for a legal day's work." But the courts refused to permit this encroachment on the freedom of contract; the law was held to be unconstitutional in the State Supreme Court. The judge quoted from Cooley the general rule that any person is at liberty to pursue any lawful calling not encroaching on the rights of others. He declared, "We cannot conceive of any theory upon which a city could be justified in making it a misdemeanor for one of its citizens to contract with another for services to be rendered, because the contract is that he shall work more than a limited number of hours per day."[84]

The San Francisco labor organizations also made a vigorous effort to secure the enforcement of the eight-hour rule in the city work. The committee from the Federated Trades Council promptly investigated the complaint that men were working nine hours per day on the City Hall, and its chairman finally reported that the City Hall Commissioners had decided that in the future all work must be on a strictly eight-hour basis.[85]

In his inaugural address of January, 1891, Governor Markham spoke of the complaints of the evasion of the eight-hour statute which he had received from the labor organizations. He urged upon the state legislature the need of remedying the matter, if this failure was due to any inherent defect in the law.[86]

In 1895-1896 there was constant complaint of the violation of the law in municipal and county work. The State Labor Commissioner followed up these charges persistently, and was able in some instances to secure an observance of the law. He reports, "I have used my utmost endeavor to enforce the law, and in every instance where I have found a violation of the same I have insisted upon its being respected. In many instances contractors have immediately desisted, in other cases they have continued its violation, and disregarded my instructions, while I have been powerless to remedy the difficulty, owing to the indefinite construction of the law.

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[84] *Ex parte Kubach*, 85 Cal. 274.

[85] Minutes of Federated Trades Council in *Coast Seamen's Journal*, March 5, July 23, 1890; October 30, August 9, 1891.

[86] Inaugural Address, Appendix, *Journal Senate and Assembly*, 29th Sess., 1st Vol., p. 5.

"When the contracts on the public work are drawn in accordance with the law, and the stipulation that eight hours shall constitute a day's work[87] is incorporated, the enforcement of the law is made easy, as the contractor would rather obey its provisions than take chances of having to sue for his payment upon a contract the provisions of which he has violated. . . . I regret exceedingly to record the fact that in some instances those who are sworn officers of the law, and entrusted with the administration of public affairs, as well as making laws, have been violators of this section."[88]

AMENDMENTS TO THE EIGHT-HOUR LAW, 1899-1901.

When in 1899 to 1900 the trade-unions regained their strength and influence, they hastened to make use of their new power to secure further legislation for the enforcement of the eight-hour work-day on all public improvements. In 1899 a new law was passed in the state legislature, which was an exact copy of the bill that the American Federation of Labor was then urging upon Congress. This made it unlawful for persons or corporations to require *or permit* any one in their employ engaged upon public work to labor more than eight hours in one day, except in case of emergency, where life or property was endangered, or in the construction of military defenses in time of war. The terms of the law were applicable to labor on any part of the public work, whether performed on the ground or elsewhere. Every contract must stipulate a penalty of ten dollars for each person for each and every day in which he labored for more than eight hours, the money thus forfeited to be withheld from the money due under the contract.[89]

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[87] They could omit this stipulation without invalidating the contract. See *Babcock v. Goodrich*, 47 Cal. 488.

[88] *Seventh Biennial Report, Bureau of Labor Statistics*, p. 92 ff.

The eight-hour legislation received further re-enforcement in 1901. The law of 1899 had not yet been tested in the courts,[90] but an earlier decision had declared that a contract was not invalidated by the omission of the eight-hour stipulation,[91] and the new measure was evidently intended to safeguard that point. The act of 1901 declared that any contract "which does not contain the stipulation herein prescribed, shall be null and void, and no recovery shall be had thereupon."[92]

In order to remove all doubts of the validity of the eight-hour legislation, this session of the legislature also passed a constitutional amendment which was to be submitted to the people for ratification at the next election.[93] This provided that. "The time of service of all laborers or workmen or mechanics employed upon any public works of the State of California, or of any county, city and county, town, district, township, or any other political subdivision thereof, whether said work is done by contract or otherwise, shall be limited and restricted to eight hours in any one calendar day, except in cases of extraordinary emergency caused by fire, flood, or danger to life or property, or except to work upon military or naval works or defenses in time of war, and the legislature shall provide by law that a stipulation to this effect shall be incorporated in all contracts for public works, and prescribe proper penalties for the speedy and efficient enforcement of said law."

When this amendment was ratified there was some question as to whether it applied to statutes already enacted, as it called for future legislation in its execution. To remove these doubts, the legislature of 1903 enacted an eight-hour law, the terms of which were practically the same as those of the law of 1899.[94]

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[89] *Statutes of California*, 1899, p. 149. *Coast Seamen's Journal*, Vol. XII, 18-7, 27-7.

[90] *Ninth Biennial Report, Bureau Labor Statistics*, pp. 64-66.

[91] *Babcock* v. *Goodrich*, 47 Cal. 488.

[92] *Statutes of California*, 1901, p. 562, Sec. 2.

[93] *Ibid.*, pp. 959-960.

[94] *Statutes of California*, 1903, p. 119.

The provisions of this statute have also been embodied in the new codes.[95]

These precautions to insure the validity of this class of legislation were necessary, as the California courts accepted these laws with great reluctance. In 1901 there were several Superior Court decisions in which the judges, on the authority of the Kubach case, declared the law unconstitutional.[96] We remember that in this case the Supreme Court held the Los Angeles eight-hour ordinance unconstitutional because of its violation of the freedom of contract.[97] Judge Sloss declared that the only difference between the Los Angeles ordinance and the state law of 1899 was that the former declared the offense a misdemeanor and punished by a fine, while the latter declared it unlawful, and affixed a penalty for each violation.[98] The Superior Court cases of 1901 were not taken to the Supreme Court.

The adoption of the amendment to the constitution in November, 1902,[99] and a decision in the United States Supreme Court recognizing the validity of a Kansas law similar to that of California, completely established the authority of these laws for which the workingmen had contended for twenty-five years. The California judges had argued the question from the standpoint of the right of the individual to engage in any lawful calling, or to make contracts to do any lawful work, so long as he did not interfere with the rights of others, and because these laws interfered with the right of the individual to enter into contracts to render lawful services they were declared unconstitutional. Justice Harlan, in rendering his decision, approached the subject from an entirely different standpoint,—that of the right of the state to have its work done on terms established by its laws. He said, "We rest our decision upon the broad ground that the work being of a public character, absolutely under the control of the State, and its municipal agents acting by its authority, it is for the State to prescribe the conditions under which it will permit work of that kind to be done. Its action touching such matter is final so long as it does not, by its regulations infringe upon the personal rights of others, and that has not been done." He claimed that such a law did not encroach upon personal rights or liberties, because the right to do public work was not a part of the liberty of the citizens of a state, and no one has any absolute right to do such work. When a contractor undertakes such work, he has no right to violate his agreement with the state by doing what the statute under which he proceeds distinctly and lawfully forbids him to do.[100]

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[95] *Penal Code*, 653c, *Statutes of California*, 1905, p. 666.

[96] *Tenth Biennial Report, Bureau of Labor Statistics*, p. 32.

[97] *Ex parte Kubach*, 85 Cal. 276.

[98] *Emanuel v. Harbor Commissioners*, Case No. 75322, Superior Court, City and County of San Francisco.

[99] Constitution of California, Art. XX, Sec. 17.

LAWS RESTRICTING THE HOURS OF LABOR OF CERTAIN SPECIAL CLASSES OF WORKERS.

Certain special classes of workers in California have had their hours of labor regulated by law on the ground that the restriction of the length of their work-day was necessary to insure the public safety. The first law of this kind was passed in 1887 for the regulation of the hours of labor of drivers, gripmen and conductors of street-cars. These employees of the different San Francisco lines struck in 1885 for a reduction in hours and increased pay. It was claimed that this unfortunate class of workers was required to labor thirteen, fourteen, or even a greater number of hours. The next session of the legislature limited their hours of work to twelve, and punished the violation of the law by a fine of fifty dollars to be forfeited to the person prosecuting the action.[101]

In addition to the law regulating the hours of labor in the street-railway service, two others applicable to special classes of workers have been passed. In 1903 the policemen of the state were given the eight-hour day,[102] and in 1905 the much-abused drug clerks were protected by a law requiring that their labors be confined to sixty hours in one week.[103] Attempts to pass laws giving the eight-hour day to the women workers of the state have been unsuccessful.[104]

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[100] *Atkin* v. *Kansas*, 191 U. S. 222, 224, decided November 30, 1903.

[101] *Statutes of California*, 1887, p. 101. *Pol. Code*, Sec. 3246-3250. The street-car men of San Francisco have since obtained the nine-hour day.

[102] *Statutes of California*, 1903, p. 51.

[103] *Ibid.*, 1905, p. 28.

RECENT PROGRESS OF THE EIGHT-HOUR DAY, 1900-1908.

A number of the trade-unions have made use of the strong organizations developed since 1896 to gain the eight-hour day. The building trades have been particularly successful in these efforts to maintain the shorter working-day. By 1900 the unions whose members were engaged in the construction of buildings had attained the eight-hour day,[105] and the San Francisco Building Trades Council then undertook to help those workers who prepared the material for the buildings obtain the same favorable conditions of labor. In August, 1900, the varnishers, polishers, woodworkers and millmen demanded the eight-hour day. The first three crafts gained the desired concession without difficulty, but the mill-owners combined to oppose the change. After a few days the combination was broken, a few of the mills granting union hours.[106] The others held out for about six months. Finally the Building Trades Council established a large competing mill, and the mill-owners then agreed to arbitrate the difficulties. After six months' work at eight and a half hours per day, the millmen obtained their eight-hour day on June 1, 1901.[107]

The iron trades have had a much severer struggle to obtain their shorter day than the building trades. The machinists all over the United States struck for the nine-hour day on May 1, 1901.[108] It is estimated that fifty thousand men took part in this strike.[109] The San Francisco unions represented in the Iron Trades Council demanded the nine-hour day at this time. About 230 shops, employing three thousand men, were involved in this strike. The men left their work on May 20. They soon gave up all demands but that for the shorter work-day, and after a hard struggle lasting over two years the nine-hour day was fully established in these trades.[110]

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[104] Made in 1905 and 1908.

[105] *Ninth Biennial Report, Bureau Labor Statistics*, p. 98 ff.

[106] *Organized Labor*, August 18, 1900.

[107] *Ibid.*, October 27, November 10, 24, December 15, 1900; February 23, 1901.

[108] *Ibid.*, May 25, 1901.

[109] *Ibid.*, June 8, 1901.

In August, 1906, the Iron Trades Council announced that its members were determined to attain that long-sought goal—the eight-hour day—on May 1, 1907. During the weeks prior to the time set for the change, committees of the council and Metal Trades Association held repeated conferences, but no agreement was reached. On the appointed day members of the unions represented in the council walked out of all shops refusing to concede their demands. The conferences of representatives of Iron Trades Council, and Metal Trades Association, together with representatives of the Civic League continued, and finally it was agreed to leave the drawing up of an agreement to Joseph F. Valentine, the president of the International Molders' Union, and J. W. Kerr who acted as representative of the employers.[111] This agreement which was accepted by the contending parties provided for a reduction of fifteen minutes in the length of the work-day to take place at intervals of six months, the eight-hour day to be attained June 1, 1910. The first step in the consummation of this agreement was taken without friction on December 1, 1908. The members of the Iron Trades Council rejoice not only in the near prospect of the realization of their long-cherished ideal in the length of the work-day, but also in the fact that after forty years of bitter controversies their organizations are at last fully recognized, and the way seems open for the peaceful adjustment of trade disputes in place of the wasteful contests of the past.[112]

The printing trades have also obtained the standard work-day. The book and job printers made an unsuccessful attempt to obtain the nine-hour day in 1897. Their failure was largely due to the lack of sufficient financial support.[113] At what was known as the Syracuse Convention, an agreement was made between the United Typothetae of America and the International Typographical Union by which the nine-hour day was to be granted to the book and job printers on November 21, 1899. The San Francisco Typothetae repudiated this agreement. While the printers on the newspapers had an eight-hour day, those in the job and book printing offices continued to work ten hours.[114] Acting under instruction from the International, the San Francisco Union decided to inaugurate the nine-hour day on October 1, 1900.[115] In 1903 these unions asked for an increase of wages, and after some negotiations the Typothetae agreed to a compromise by which there was to be a gradual decrease in the length of the working-day, and a slight addition to the wages. As a result of this agreement, the eight-hour day was obtained for the printers in the job and book printing offices on January 1, 1905.[116]

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[110] *Labor Clarion*, March 10, 1903; April 10, 1903, p. 9.

[111] A good summary of the history of this struggle is given in the *Labor Clarion*, September 1, 1908, p. 4.

[112] *Labor Clarion*, November 27, p. 8; December 4, p. 8; *Coast Seamen's Journal*, December 9, 1908, p. 6.

[113] *Labor Clarion*, August 4, 11, 1905.

The Citizens' Alliance was quite active at this time, and it was generally believed that the influence of this organization for checking concessions to the trade-unions had much to do with the subsequent attempts of the employers to return to the nine-hour day. As soon as the agreement expired by which the shorter working-day had been granted, the Typothetae declared that the reduced profits and the difficulty of competing with eastern firms, where the longer work-day prevailed, made it necessary to return at once to the former hours of work. This resulted in a lockout from many of the large job printing offices of the city. The Citizens' Alliance and the individual employers made great efforts to import printers to take the place of the union members refusing to accept the new conditions of employment, but they were unsuccessful. After about two months the union men and women returned to work with the eight-hour day fully recognized. The 1906 report of the Bureau of Labor Statistics shows that the printers in all the cities of the state except Los Angeles have the eight-hour working-day.[117]

The brewery workers are also among the groups of trade-unionists enjoying the standard work-day. The large breweries of San Francisco and Portland granted the eight-hour day to their workmen in April, 1901.[118] In some of the trades, as the sheet-metal workers, the upholsterers, and electricians, the eight-hour day has been obtained for a part of those employed. The Labor Commissioner estimates that in 1906 about 17 per cent. of the whole number of those employed in San Francisco and Oakland and 10.8 per cent. of those employed in Los Angeles had obtained the eight-hour day.[119]

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[114] *Organized Labor*, May 19, 1900.

[115] *Ibid.*, September 1, 1900.

[116] *Labor Clarion*, June 2, 1905. See also June 7, 9, 14, 21, July 28.

[117] *Twelfth Biennial Report, Bureau of Labor Statistics*, pp. 88-150.

The establishment of strong labor organizations throughout the state has resulted since 1900 in a general movement for the reduction of hours. The Labor Commissioner in his report for 1903-04 says that "Fewer hours of labor seem to be more desired by those who work than is more pay." Of the organizations replying to his inquiries, 68.7 per cent. showed a decrease in the hours of work without lessening of wages. In San Francisco every organization reported a recent shortening of the working-day. In other cities the percentages showing decreases in the hours of labor were as follows: Sacramento, 75 per cent.; Eureka, 50 per cent.; Fresno, 75 per cent.; Los Angeles, 35 per cent.; San Diego, 50 per cent. Of those reporting changes 55 per cent. obtained a reduction from nine to eight hours, and the remainder, with one exception, from ten to nine hours. In 60 per cent. of the cases the reduction was due to agreements with the employers or union demands, 8 per cent. were won by strikes, and 10 per cent. were given voluntarily.[120] The report of the Bureau of Labor Statistics for 1905-06 shows that in San Francisco 61 per cent. of the total number of employees of the city have the nine-hour day, and only 14 per cent. work ten hours. The conditions of work in Oakland, Alameda, and Berkeley are similar to those in San Francisco. In Los Angeles, where the employers have been more successful in fighting the trade-unions, 41.4 per cent. work nine hours, and 35.9 per cent. still have the ten-hour day.[121] It seems probable that in a few years all the wage-workers of California will attain that long-desired blessing—the eight-hour day.

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[118] *Organized Labor*, April 20, 1901.

[119] *Twelfth Biennial Report, Bureau Labor Statistics*, pp. 99, 109, 115.

[120] *Eleventh Biennial Report of the Bureau of Labor Statistics*, p. 96.

[121] *Twelfth Biennial Report, Bureau Labor Statistics*, pp. 99, 109, 115.

CHAPTER VIII.

LAWS FOR THE PROTECTION OF THE WAGES OF LABOR.

GENERAL HISTORY OF THIS CLASS OF LEGISLATION.

A mechanics' lien law was enacted in 1850 by the first session of the California legislature, and many subsequent sessions have renewed the efforts to render more secure the payment of the wages of labor. Some of these laws were passed at one session only to be repealed at another, but throughout the history of this legislation we find decided progress towards the completest possible protection of the rights of the wage-workers, and no substantial gain of this kind has ever been allowed to slip from their grasp.

It is difficult if not impossible to discover the sources of the innumerable measures of this kind that have been presented in the legislature. The laws give protection to material-men and sub-contractors, as well as to laborers, and doubtless many of the amendments were prompted by the former classes of claimants. Other changes are directly traceable to decisions of the Supreme Court, which have always given a strict interpretation of the scope of measures of this kind. Additional clauses or sections have been added when it was found that, with this literal construction, the laws failed to give the protection for which they were intended.

From the standpoint of the protection afforded the wages of labor, by far the most important of these enactments were the laws passed in 1868. The mechanics' lien law, and the supplementary measure for the protection of the wages of labor passed at that time, contain all the more essential features of the laws for the protection of wages now embodied in the California codes. Subsequent additions to this class of legislation have aimed at securing the adequate enforcement of the intent of these earlier laws, rather than the addition of important new features.

An adequate mechanics' lien law is said to have been the chief object of the first attempt at a federated labor movement in 1863-64.[1] While the securing of the eight-hour working-day was the principal aim of the vigorous and extensive organized activities of 1866 to 1869, the two other measures for the protection of wages which were passed at the same time as the eight-hour law received their full share of attention. It has been noted that in 1866 the trade-unions made a well-planned but unsuccessful effort to pass an eight-hour law. A mechanics' lien law was also presented at this session of the legislature, but it was a crude, badly drawn bill, which failed of passage.

The defeats of 1866 only served to stimulate the labor organizations to greater activities. We have already traced the history of the efforts made in 1867 to initiate the eight-hour day by the actions of different trade-unions, and the first entrance of these organizations into the political activities of the state, together with the campaign of the Workingmen's Convention by which candidates for the legislature were pledged to the support of labor legislation. These activities, which marked the culmination of the first great labor movement of the state, won for future generations of California wage-workers the three important laws of 1868: the eight-hour law, the mechanics' lien law, and the act for the protection of wages.

As a part of this state campaign, an address was issued in the name of the Industrial League, presenting the views of the workingmen on the subject of labor legislation needed in California. One of the resolutions declared that the adoption of a mechanics' lien law, the mode of application of which would be perfectly intelligible to every workingman in the state, was a reform that had been long desired and sorely needed. The eastern lien law was criticized as being "so heavily invested by cumbersome machinery of law, and its principal provisions so clamped, as it were, by legal technicalities, as to render its workings of little account save to lawyers and dishonest contractors."

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[1] The *Alta* in an editorial of June 2, 1868, says, "About seven years since a Trades Union was organized in the East which intended to include in its councils representatives from every state. A body was formed in California to take part in this Union, but it fell to pieces in 1864. It devoted all its energies to the passage of a mechanics' lien law in which it failed." Mechanics' lien laws were passed in 1850, 1853, 1855, 1856, 1857, 1861, 1862, and 1864. But the Act of 1868 was the first one entirely satisfactory to the working people.

They expressed their conviction that "a less expensive article" could be used with the same effect, thereby saving time, money, and trouble. The platform set forth their determination to use that power which, as citizens, they possessed, to secure at the earliest possible period the passage of a law "simple in its workings, honest in its conclusions, equitable in its provisions—in fact, a law which will protect the workingmen from any and all infringements attempted by dishonest men who thrive at the expense of honest labor."[2]

The workingmen seem to have considered that the law passed in 1868 fulfilled these requirements in a fairly satisfactory way, for in the following year the pledge presented for the endorsement of candidates for political offices had, among other requirements, this section:[3] "The Lien Law is all-important to the best interests of laboring men and persons furnishing materials for building, and we believe the present law a good one. Will you vote against the repeal of the Lien Law, or any amendment calculated to weaken its present force and effect?" That their fears of a repeal were not unfounded is evident from the fact that several sections of the law were omitted from the codes of 1872, but were re-enacted two years later.

The Workingmen's Party of 1877-78 included among its minor aims the demand for "a perfect mechanics' lien law." A section was inserted in the new constitution adopted in 1879 which charged the legislature with the duty of providing by law for the speedy and efficient enforcement of the liens to which mechanics, material men, artisans, and laborers of every class were declared entitled.[4]

While a few changes were made in the laws on this subject in 1880 and 1883, the legislature made no serious efforts to fulfill this obligation until 1885, when a number of important amendments and additions were made. This was a year of great activity on the part of the labor organizations. The Knights of Labor were then at the height of their popularity and influence. Twenty-five assemblies had been organized in

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[2] *Alta*, June 2, 1867.

[3] *Ibid.*, August 21, 1869.

[4] Constitution of California, Art. XX, Sec. 15.

California, and their influence extended to all parts of the state. The passage of an effective mechanics' lien law was one of the aims enumerated in their declaration of principles, and it is probable that their influence helped secure the substantial additions made to the laws at this time. Numerous less important changes have been made in the laws for the protection of wages since 1885, so that at the present time these laws give the completest possible guarantee that the workers of California will receive the wages which they have earned.[5]

The foregoing brief survey will give a general idea of the history of this important branch of the labor legislation of California. We are now prepared to make a more detailed study of the provisions of these laws, showing at just what periods the sections having the greatest significance for the wage-workers were enacted. We will first consider the mechanics' lien laws, or those giving the wage-worker a claim on the property whose value has been increased by his labor, and will follow this with a summary of other laws which have sought to give further protection to wages.

LINES OF DEVELOPMENT OF THE MECHANICS' LIEN LAWS.

In examining the mechanics' lien laws from the standpoint of their value to the wage-worker, we can trace development along four different lines:

1. Extent in the application of the laws allowing mechanics' liens.
2. Provisions to make secure property or funds which can be depended on to furnish the money necessary for the payment of the wages due.
3. Simplification and lessening of the cost of the legal process by which the lien can be obtained and enforced.
4. Provisions of the laws making wages the preferred claim in the division of the proceeds of the sale of the property, or of funds available for the satisfaction of the liens.

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[5] These sections of the California codes have been amended in 1887, 1889, 1893, 1897, 1899, 1901, 1903, 1905, and 1907. The amendments to the codes of 1901 were declared unconstitutional because of a defect in the enacting clause of the bill. *Lewis* v. *Dunne*, 134 Cal. 291, 66 Pac. 478.

EXTENT OF APPLICATION OF LIEN LAWS.

The first law of this kind enacted in 1850 allowed a mechanics' lien only for work done on a building or wharf.[6] The law of 1853 added "bridges, ditches, flumes, or aqueducts constructed to create hydraulic power, or for mining purposes,"[7] to the list of properties on which liens could be acquired. This amendment was soon repealed; the law of 1855 allowing such claims on a "building, wharf or other superstructure."[8] In this year a section was also added allowing a lien "when any person shall have made an express contract in writing with the owner of any lot or lots, in any incorporated city or town to grade or improve the same, or the street in front of or adjoining the same, and shall go on and complete the said grading or improving of the said lot, etc."[9] In 1857 the bridges, ditches, flumes, and aqueducts were once more subject to liens,[10] and fences and machinery were added to the list in 1862.[11] Two important lines of work, the construction of wagon roads and railroads, received this protection in 1864,[12] and services on mining claims were included in 1868. In this year the list stood: mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, wagon road, aqueduct to create hydraulic power for mining or other purposes, or any other structure or superstructure.[13] It would seem that this should have been sufficiently inclusive, but it was found necessary to add "well" in 1899.[14]

The section of the law allowing a lien for improvements on a lot in an incorporated city or town has also had further developments. The law of 1868 provided that "Any person who shall at the request of the owner[15] of any lot in any incorporated city or town, grade, fill in, or otherwise improve the same or the street in front of or adjoining the same, shall have a lien on such lot for his work done and materials furnished in grading, filling in or otherwise improving the same."[16] In 1885 this was amended by the addition of "sidewalk in front of or adjoining the same,"[17] and two years later, the law permitted liens for work done in the construction of "any areas, or vaults, or cellars, or rooms, under said sidewalks."[18]

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[6] *Statutes of California*, 1850, p. 211.

[7] *Ibid.*, 1853, p. 202-3.

[8] *Ibid.*, 1855, p. 156.

[9] *Ibid.*, 1855, Sec. 2.

[10] *Ibid.*, 1857, p. 84.

[11] *Ibid.*, 1862, p. 384.

[12] *Ibid.*, 1864, p. 465.

[13] *Ibid.*, 1868, p. 589. This list was embodied in the Code of Civil Procedure of 1872, Sec. 1183, and has been retained ever since.

[14] *Statutes of California and Amendments to the Codes*, 1899, p. 33. The courts have held that this applies to wells for oil and also for water. (*Parke & L. Co.* v. *Inter Nos O. & D. Co.*, 147 Cal. 493.)

A further recognition of this principle that the land is chargeable with the improvement made upon it is found in the provision which has been a part of all the mechanics' lien laws, to the effect that the land on which the improvement is situated is also subject to the lien. The law of 1850[19] stipulated that it should apply to the land on which the improvement was made and the space around it, not exceeding five hundred square feet. In 1856[20] this was changed to apply to the land on which the improvement was situated and such additional space as was necessary for its convenient use.[21] If the person authorizing the improvement was only a part owner, or owned less than a fee simple, then his interest was chargeable with the lien. These provisions have been retained since that time.[22]

The theory behind all these lien laws is that such claims should be enforced because labor or materials actually bestowed upon the property have increased its value. The courts have refused to allow a lien where such was not the case. Thus it has been decided that a watchman who guards the property,[23] a cook who prepares food for the men making the improvements,[24] and the teamster who hauls the material to the building[25] are not entitled to mechanics' leins to enforce the payment of their wages. An apparent exception to this rule is the lien allowed for work in mines, as the amendment of 1903 expressly states that the lien shall be allowed for the development by *substractive* process, as well as for constructive work.[26]

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[15] The statute of 1862, p. 389, Sec. 21, reads, "When any person shall make an express contract in writing for grading lots or street, etc."

[16] *Statutes of California*, 1867-8, p. 591, Sec. 9.

[17] *Statutes of California and Amendments to the Codes*, 1884-5, p. 145.

[18] *Statutes of California and Amendments to the Codes*, 1887, p. 155. The law of 1887 read, "Any person who at the request of the *reputed owner* of any lot, etc.," so a later amendment was necessary to make the law read, "owner or reputed owner." The Supreme Court has decided that this section is unconstitutional in so far as it purports to authorize the creation of a lien upon land by virtue of a contract for improvement of the street adjacent thereto entered into with one who is only the reputed owner of the land, so as to affect the interest of the real owner therein. (*Santa Cruz Rock P. Co. v. Lyons*, 117 Cal. 213.)

[19] *Statutes of California*, 1850, p. 212, Sec. 6.

[20] *Ibid.*, 1856, p. 204, Sec. 4.

[21] *Tibbatts v. Moore*, 23 Cal. 208. *Green v. Chandler*, 54 Cal. 626. *Lothian v. Woods*, 55 Cal. 159. *Cowan v. Griffith*, 108 Cal. 224.

[22] When the lien can be satisfied by the sale of the building apart from the land, the California laws have permitted such sale and removal from the land.

Liens granted for labor performed on some one section extend to the whole property involved. Thus a carpenter's lien is not on the part of the building that he erected, but on the whole structure; the labor of the miner gives him a claim on the entire mining property, including the works owned and used by the owners for the reduction of the ores,[27] and the courts have held that the liens of laborers for work on an eighty-acre tract being developed for oil attach to the whole property.[28] It has been found necessary to modify this ruling, however, in some cases of liens for labor on irrigating canals. The claim has been enforced against the section of the canal on which the labor was performed.[29] This would seem to establish a precedent for a similar ruling in the case of railroads, though the past decisions have held that the liens apply to the whole road.[30]

The courts will not enforce mechanics' liens against public property.[31] The laws also limit the application of the lien allowed under certain conditions. Where the work is in charge of a contractor the liens for improvements can be enforced only to the extent of the contract price.[32] If the improvements are being made on property that has been leased, or without the authority of the owner, he may prevent the attachment of liens to his land or interest in the property by posting a written notice, or filing and recording such a notice, disclaiming all responsibility, within ten days of the time when he obtains knowledge of such improvements.[33] Mining machinery placed in a claim under lease can be protected in the same way. It is not subject to liens for labor in the mines if the lessor files his lease and posts a notice within ten days stating that the property belongs to the lessor and is not subject to liens.[34]

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[23] *Williams* v. *Hawley*, 144 Cal. 97, 99.

[24] *McCormick* v. *Los Angeles City Water Co.*, 40 Cal. 185.

[25] *Wilson* v. *Nugent*, 125 Cal. 280, 284.

[26] *Statutes of California and Amendments to the Codes*, 1903, p. 84-6; *Jurgenson* v. *Diller*, 114 Cal. 493; *Reese* v. *Bald Mt. G. M. Co.*, 133 Cal. 289.

[27] *Amendments to the Codes of California*, 1885, p. 143, Sec. 1183.

[28] *Berentz* v. *Belmont Oil Co.*, 84 Pac. 47.

[29] *Pac. Rolling Mill Co.* v. *Bear Valley Tr. Co.*, 120 Cal., pp. 94, 100-1.

[30] *Cox* v. *Western R. R. Co.*, 44 Cal. 18, 28. *Bringham* v. *Knox*, 127 Cal. 40, 43.

[31] *Mayrhofer* v. *Board of Education*, 89 Cal. 112. *Bates* v. *Santa Barbara*, 90 Cal. 543.

FUNDS TO PAY LIEN CLAIMS.

Having considered the development in the extent of application of the lien laws, we now turn to the second important topic,—the provisions for securing the property and funds from which the wages due can be paid.

In the absence of a valid contract, the law always assumes the simpler, direct relationship between the owner and those who are performing the labor or furnishing the material for the improvement of his property, and charges him with the responsibility for meeting the claims that may arise.[35] Since 1868 the law has provided that the person in charge of the property shall be held to be the agent of the owner, so that a lien on the property can arise from improvements under his direction unless the owner posts the formal notice disclaiming responsibility.[36]

In many cases a lien on the property would not be worth much if it were necessary for it to take its chances of payment in competition with many other incumbrances. Beginning with the amendments to the lien laws in 1856, the California legislators have sought to give the liens allowed by law preference over all other claims on the property that may accrue after the work on the improvements has commenced. It was evidently somewhat difficult to secure the recognition of this principle. The law of 1856 says that the owner is not bound to answer attachments until the liens against the property are satisfied.[37] A year later an amendment provided that liens should be given preference over mortgages or other encumbrances not recorded prior to the commencement of the work,[38] but this was repealed a month after its enactment. The next session of the legislature re-enacted the provisions that "liens created by this act shall be preferred to every other lien or encumbrance which shall have attached upon the said property subsequent to the time at which the work was commenced or the first of the materials were furnished; and also to all mortgages and other encumbrances unrecorded at the time such work was commenced or the first of such materials were furnished,"[39] and this section has remained on the California statute books ever since.

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[32] *Statutes of California and Amendments to the Codes*, 1885, p. 143, Sec. 1183.

[33] The earlier laws provided that this notice must be filed in three days. Act of 1867-8, p. 590, Sec. 4. *Amendment to the Codes*, 1874, p. 411. This time was extended to the amendments of 1907, p. 577, Sec. 1192.

[34] *Statutes of California and Amendments*, 1907, p. 577, Sec. 1192.

[35] For what constitutes a valid contract see *Statutes and Amendments*, 1885, p. 143, 1887, p. 152, Sec. 1183.

[36] *Statutes of California*, 1867-8, p. 590, Sec. 4. This provision was contained in Sec. 1186 of the Code of Civil Procedure of 1872, and appears as Sec. 1192 of later Codes.

In our complex industrial life, the owner is rarely in immediate charge of the improvements made on his property; the wage-workers have no direct relations with him, but are employed by contractors and sub-contractors. This has greatly complicated the problem of furnishing legal protection for the wages of labor. An intricate body of regulations has been developed in the effort to compel these subordinates to meet their obligations, without placing any unjust burdens on the property of their innocent employer. The laws have always recognized the injustice of compelling the owner to pay twice for the same work,[40] and so a number of measures have been passed which authorize or compel the withholding of a part of the contract price as a fund for the satisfaction of the liens of laborers or material-men.

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[37] *Statutes of California*, 1856, p. 203-4

[38] *Ibid.*, 1857, pp. 58, 178.

[39] *Ibid.*, 1858, p. 226, Sec. 3.

[40] The amendment to the code passed in 1880 in response to the demand of the Workingmen's Party for a law giving a perfect lien on the property that had received the improvement is the only instance of the requirement that the owner pay the lien claims irrespective of the sum due the contractor. (Amendments to the Code of Civil Procedure, p. 63. *O'Donnell* v. *Kramer*, 65 Cal. 353.) The courts refused to allow any such lien beyond the amount due the contractor.

In the earlier lien laws the owner was required to retain the funds necessary to pay the claims of laborers when he received notice that they were due. Laborers, material-men, and subcontractors were required to file their accounts with the County Recorder within thirty days of the completion of the work, and give notice to the owner of the intention to hold such a lien on the property. It then became the duty of the owner to withhold from the contractor the money so claimed.[41] This fund was generally left in the hands of the owner until the disputed claims were settled, but the law of 1862 ordered the money deposited with the County Clerk.[42] If the owner were prompt in his payment of the contractor,[43] then there would be no outstanding fund of money due for the work. Since the law never compelled the owner to pay twice, or to pay a larger sum than that for which he had contracted, there would be no way of charging the property with a lien to pay the debts incurred by the contractor, and the defrauded laborer or material-man would have no recourse but a personal action. Thus in cases where there was collusion between dishonest owners and contractors, the purpose of the lien laws was easily defeated by an early payment of the entire contract price.

Various legal expedients have been tried in the effort to prevent the suffering of laborers and material-men due to the promptness of the owner in discharging his obligations to the contractor. In 1862 an amendment to the mechanics' lien law provided that payments made by the employer prior to the time when they were due under the original contract, for the purpose of defeating any lien of a laborer or material-man, were to be deemed fraudulent and void as against them.[44] The law of 1868 tried another plan for meeting the difficulty. It provided that when such claims were filed the contractor should defend at his own expense all such suits, and that the judgments and costs of the suits should be paid from the money withheld by the owner, and due by the terms of the original agreement to the contractor. The act also stipulated "If the amount of such judgments and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable."[45] This section was omitted from the codes of 1872, but was re-enacted in 1874.[46] However, it did not meet the difficulty, for the courts continued to enforce the rule that no lien could be collected except from the unpaid balance due the contractor,[47] and there was no way to compel the owner to pay and then recover from the contractor.

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[41] *Statutes of California*, 1850, pp. 211-2. Also Statutes of 1855, 1856, 1858, 1862.

[42] *Statutes of California*, 1862, p. 385, Sec. 5. The laborer or material man must give a written notice prior to the time when the money is due the contractor. If he admits the validity of the claim, then the owner shall pay it. Where the claim is disputed, then the money due the contractor is to be deposited with the County Clerk. Where the amount deposited is not sufficient to pay claims then a pro rata proportion is to be paid.

[43] The notice must be given to the owner before he pays the contractor. (*McAlpine* v. *Duncan*, 16 Cal. 127, 1860.)

The new constitution declared that "Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide by law for the speedy and efficient enforcement of such liens."[48] The legislature undertook to fulfill this obligation in 1880 by passing a law to the effect that such liens should not be affected by the fact that no money is due or to become due, on any contract made by the owner with any other party.[49] But, as in previous years, the courts held that, where there was a valid contract, this measured the owner's liability. If no notice of the claim of a laborer or sub-contractor had been given him in time to enable him to withhold the amount necessary for its payment, there was no way of compelling him to pay more than the sum that was still due on his contract.[30]

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[44] *Statutes of California*, 1862, p. 387, Sec. 10.

[45] *Ibid.*, 1867-8, p. 592, Sec. 11.

[46] *Amendments to the Codes*, 1873-4, p. 411.

[47] *Whittier* v. *Wilbur*, 48 Cal. 175 (1874). *Renton* v. *Conly*, 49 Cal. 185 (1874). *Wells* v. *Cahn*, 51 Cal. 423 (1876). This last decision expressly declares that the amendments to the Code of Civil Procedure of 1874 did not change this rule. *Ibid.*, 424.

[48] Constitution of California, Art. XX, Sec. 15.

[49] *Amendments to the Codes*, 1880 C. C. P. 63.

The legislators again attacked the problem in 1885, and succeeded at last in finding a solution that would insure the retention of a fund to pay the debts of the contractor without working any manifest injustice to the owner of the property. This has been achieved by requiring: (1) The recording of the original contract. (2) The withholding of a part of the payments due. (3) A delay in the final payment.

Since the amendments of 1885, the law requires that in all cases where the amount involved exceeds $1000 there shall be a written contract. This contract must conform in its terms to the provisions of the law, and must be subscribed by the parties thereto and recorded before the work commences, otherwise it is void and there can be no recovery on it by either party. In the absence of a valid contract, the labor done and materials furnished by all persons except the original contractor are deemed to have been furnished at the personal instance of the owner, and entitle such creditors to a lien on the property.[31]

As to the terms of the contract, the law provides that no part of the contract price shall be paid in advance, but that it shall be made payable in installments, at specified times, after the commencement of the work, or on the completion of specified portions of the work; *provided that twenty-five per cent. of the contract price shall be payable thirty-five days after the completion of the work.* Any payment made before it is due by the terms of the contract is not valid to defeat liens on the property.[52]

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[30] *Whittier v. Hollister*, 64 Cal. 283. *O'Donnell v. Kramer*, 65 Cal. 353.

[31] *Statutes of California and Amendments to the Codes*, 1884-5, p. 143, Sec. 1183. The law of 1885 required that plans and specifications be filed with the contract, but after the amendment of 1887 it was only necessary to file a memorandum containing the information called for in the law. (*Reed v. Norton*, 90 Cal. 590. *Willamette L. & M. Co. v. Los Angeles C. Co.*, 94 Cal. 229.)

No action to recover damages where contract is void for non-recordation. (*Palmer v. White*, 70 Cal. 220.)

Mechanics' lien exists only by virtue of compliance with the statute which creates it. Where the contract is void, the contractor can claim no implied right to a lien, which, had the written contract been properly filed, he might have recovered under it. (*Morris v. Wilson*, 97 Cal. 646-7.)

Yet another safeguard was provided. In case the laborer or material-man fears that the twenty-five per cent. reserve fund will not be sufficient to meet all the claims, he may give the owner written notice of labor performed or material furnished, and it then becomes the duty of the owner to withhold the money necessary to pay the claims.[53]

One part of the law of 1885 was omitted from the later statutes; probably because it was deemed unnecessary because the same object was attained by the rulings of the courts. It provided that where notice had been given, the owner must withhold the funds to pay the claim of the laborer or material-man until such notice was by writing withdrawn, and in addition stipulated that "all money paid thereafter by the owner to the contractor, or such other person, while such notice is in force, shall for the purpose of all liens of all persons, except that of the contractor, be deemed a payment prior to the time the same was due within the meaning of and subject to the provisions of this section."[54]

The mechanics' lien law of 1885 contained still another section which sought to provide a fund for the payment of debts incurred by contractors. This required that every contract filed under the provisions of the act should be accompanied by a bond in an amount equal to at least twenty-five per cent. of the contract price. By its terms this bond was to inure to the benefit of the persons who performed the labor for, or furnished material to the contractor. The failure to require this bond rendered the contractor and *owner* jointly and severally liable to damages to any and all material-men, laborers, and sub-contractors entitled to liens upon the property affected by the contract.[55] This section of the law was repealed in 1887,[56] and reënacted in 1893.[57] The Supreme Court has held this requirement of the law to be unconstitutional, claiming that there is no reason why those who contract to erect buildings should be compelled to secure their contracts by bonds, while those making contracts in innumerable other matters are not subjected to this burden. It was also held that this requirement placed an unreasonable restraint upon the owner in the use of property, and that it was an unnecessary and unreasonable restriction upon the power to make contracts.[58]

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[52] *Statutes of California and Amendments to the Codes*, 1884-5, p. 144, Sec. 1184. *Merced Lumber Co. v. Bruschi*, 152 Cal. 372, 374, is a recent case where the agreement to pay on completion of the building was held to be a substantial violation of the statute. The payment of the entire contract price did not, in this case, relieve the owner from the penalty imposed for the benefit of one who was not paid by the contractor.

[53] *Statutes of California and Amendments to the Codes*, 1884-5, p. 144, Sec. 1184. Notice to the owner which may be given under this section as amended in 1885 is not a notice of a lien, which is to be recorded. Such a notice to the owner is an extra precaution on the claimant's part, and it is optional with him whether he give it or not. (*Jewell v. McKay*, 82 Cal. 149.)

Under the mechanics' lien law prior to the amendment adopted in 1885, service of notice did not affect the rights of the parties, nor impose upon the owner the duty of retaining a portion of the contract price to satisfy any lien which the sub-contractor might subsequently file. (*McCants v. Bush*, 70 Cal. 125.) Such a notice may be given to the owner of a public building. The right to the claim is not dependent on the legality of the contract. (*Bates v. Santa Barbara Co.*, 90 Cal. 543. *Buss L. & M. Co. v. Garrettson*, 87 Cal. 749.)

[54] *Statutes of California and Amendments to the Codes*, 1884-5, p. 145.

The law enacted in 1897 for the protection of employees of contractors, persons, companies, or corporations, engaged on public works has a similar requirement. As has been pointed out, no lien can accrue against public property, so it is necessary to furnish some other means of protecting those who are employed on such improvements. By this law those who are awarded contracts for public work are required to furnish for each undertaking of this kind a bond in a sum not less than half the total amount payable by the terms of the contract. The sureties of the bond guarantee the payment of such debts of the contractor as are properly filed.[59] The law passed in 1899 required a similar bond for all contracts for street and sewer work in municipalities.[60]

The decision of the Supreme Court which refused to sanction the section of the law of 1885 making the requirement of a bond obligatory, does not operate to prohibit the taking of a bond, when the owner wishes such additional security. Such bonds are often given and the courts will enforce the bond, even when the contract is void for want of conformity to the statutory requirements. The bond given by contractors on public works is necessary for the protection of their employees, as the law does not allow the customary liens. The right of the legislature to require that public officials shall take such a bond does not seem to have been questioned by the courts.

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[55] *Statutes of California and Amendments*, 1884-5, p. 147.

[56] *Ibid.*, 1887, p. 155.

[57] *Ibid.*, 1893, p. 202.

[58] *Gibbs v. Tally*, 133 Cal. 373, 377. *Shaughnessy v. Am. S. Co.*, 138 Cal. 543, 545.

[59] *Statutes of California and Amendments*, 1897, pp. 201-2.

[60] *Ibid.*, 1899, p. 23.

Another requirement of the law which in an indirect way operates to insure the value of the property against which the lien may accrue, is the one preventing the interruption of the work by attachments on the material intended for use in the building or other improvements. This provision was first enacted in 1862,[61] and was also a part of the law of 1868.[62] It was omitted from the code of 1872, but was re-enacted as an amendment in 1874.[63] Its object is the prevention of the attachment of the materials about to be used in the contemplated improvements, for any debt except that incurred in their purchase, so long as in good faith such materials are about to be applied to the construction, alteration, or repair of the building, mining claim, or other property.[64]

Our study of these sections of the mechanics' lien laws shows that, as the result of years of effort and development, the laws of California guarantee a fund or property for the payment of any laborer or material-man who complies with the legal requirements necessary for the protection of his rights. The claim of the laborer or material-man to a share of this fund, or of the proceeds of the sale of the property, must be established by a definite legal process. Our next topic of discussion is the history of the development of the relatively simple and inexpensive process by which the claim to a share of the funds reserved for such payments may be established.

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[61] *Statutes of California*, 1862, p. 384.

[62] *Ibid.*, 1867-8, p. 589.

[63] *Amendments to Codes*, 1873-4, p. 412, Sec. 1196.

[64] *Code of Civil Procedure*, Sec. 1196.

THE LEGAL PROCESS BY WHICH MECHANICS' LIENS ARE OBTAINED AND ENFORCED.

The process of enforcing claims under the first mechanics' lien law was so difficult, intricate, and expensive, that the law must have been practically useless for the wage-worker. In cases where he was employed by a contractor, it was necessary that his claim be endorsed by his employer before it was presented to the owner of the property on which the lien was to accrue. If this endorsement were refused, suit must be brought against the contractor within thirty days. The law then provided, "If he obtains judgment against his employer, he shall lose his lien for the amount thereof, unless within thirty days thereafter he shall commence an action against the owner for the amount established by the judgment, if the money be then due from the owner to the contractor, if not, then he shall file in the Recorder's office of the county in which the building or wharf is situated a notice of said claim and judgment, and shall commence his action against the owner within thirty days after the money is due from the owner to the contractor."[65] As the refusal of the employer or contractor to pay generally implies his unwillingness to endorse such a claim, two law-suits and one formal recorded document were necessary to obtain the redress afforded by this law. There were no provisions whereby the employer was charged with the costs of this expensive process, so it is obvious that wage-workers would rarely seek relief in this way. The requirement that the employer should endorse the claim was soon dropped from the law; the statute of 1855 merely specifying that the claim be filed and notice given the owner within five days.[66]

It would hardly be profitable to follow through the various statutes all the changes in the legal process by which the right to a mechanics' lien was established. Instead, we shall briefly outline the more important amendments which have made it easier for laborers and material-men to obtain the protection of the law.[67] For this purpose we shall group the provisions of the laws under five heads: (1) Time of filing the claim. (2) Form of the document filed or of the notice given the owner. (3) Time of commencement of the suit. (4) The costs of the legal protection. (5) Forfeiture of the right to the lien.

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[65] *Statutes of California*, 1850, p. 212, Sec. 4.

[66] *Statutes of California*, 1855, p. 157.

(1) *Time of filing claims.*

All the California statutes have provided that the claim of the original contractor must be filed within sixty days of the completion or cessation of the work, and that of sub-contractors, material-men, mechanics, or laborers, within thirty days of such completion, or cessation from work.[68] Many liens have been lost because of the failure to file the claim at the right time.[69] The courts require a strict conformity to the law, and refuse to recognize the validity of a lien recorded before the completion of the work, or after the time allowed by the statutes. It is often difficult to determine just when the building is completed. Then, too, there are cases where the structure is left in an unfinished condition, or where the contractor abandons his contract leaving the work incomplete and his creditors unpaid. It is necessary that the law clearly define what constitutes completion of the building so that there can be no doubt about the time of filing of the lien.

This was attempted in 1887, by an amendment which provided that any trivial imperfections in the work should not be deemed such a lack of completion as to prevent the filing of the lien, and, in case of contracts, the occupation or use of the building or improvement by the owner or his representative, or the acceptance by the owner or his agent of the building or improvement, should be deemed conclusive evidence of completion; or the cessation of labor for thirty days upon any unfinished contract or building should be deemed equivalent to its completion for the purposes of filing the claim for a lien.[70]

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[67] The courts have decided that the actual performance of the work entitles a person to such a lien. In *Ah Louis* v. *Harwood*, 140 Cal. 500, 504-6, the court ruled, "Of course, the laborer must do the work for which he claims the lien on the property sought to be charged therewith, and when he does this he has complied with the law—he has performed labor upon the premises . . . The owner cannot protect it from statutory liens, except he give the statutory notice or some notice equivalent thereto."

[68] Since the amendments of 1897, the provisions of this section of the code are somewhat contradictory. The usual thirty and sixty days are specified, and then it is also provided that, "All claims of lien must be filed within ninety days after the completion of said building, improvement, or structure, or the alteration, addition to, or repair thereof." This evidently applies to cases where the owners have not filed the notice of completion. (*Buell* v. *Brown*, 131 Cal. 158.) *Code of Civil Procedure*, Sec. 1187.

[69] Premature filing confers no rights. (*Perry* v. *Brainard*, 8 Pac. 882. *Roylance* v. *San Luis H. Co.*, 74 Cal. 273. *French* v. *Powell*, 135 Cal. 636. *Willamette S. M. L. Co.* v. *Los Angeles C. Co.*, 94 Cal. 299.)

Finally in 1897 the entire responsibility of determining just when the work is done, and when the time for filing liens commences, was thrown upon the owner of the property on which the labor is performed. Within ten days after the completion of the improvements, or forty days after the cessation of labor upon any unfinished contract, he must file for record in the office of the County Recorder a notice stating when such building was actually completed, or the date of cessation from labor. The notice must also contain the names and the nature of the title of the person who caused the improvement to be made, and a description of the property sufficient for identification. If the owner neglects to file this notice, he forfeits the right to defend himself from paying any lien by claiming that the lien was not filed in time.[71]

As the law now stands, there need be no uncertainty either about the time of filing or the contents of the notice for a lien, since the owner is required to file in the public records all the information necessary to insure a full compliance with the conditions prescribed for the establishment of a valid lien on the property, or a claim to payment from the fund which the owner is required to withhold from the contractor.

(2) *Form of the document filed, or of the notice to the owner.*

The California legislation also shows development in the direction of a liberal construction of the requirements necessary to insure the validity of the document filed in support of the lien claim, or of the notice to the owner. This development is observable not only in the actual provisions of the laws, but also in the disposition of the courts to construe liberally such parts of the laws as are intended to furnish relief from any possible injustice. The well-recognized rule is, a strict construction of the parts of the law on which depend the right to the existence of the lien, and a liberal construction of the remedial portions.[72]

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[70] *Statutes of California and Amendments to the Codes,* 1886-7, p. 155.

[71] If the owner fails to file and record the notice of cessation of labor, the time of filing the lien is not indefinitely postponed. It must be filed within 120 days of the cessation of labor; the thirty days that the law counts as equivalent to completion, and the additional ninety days which is the limit of the time allowed for filing the lien. (*Buell* v. *Brown,* 131 Cal. 158, 161.)

The contents of the claim filed in the Recorder's office have been practically the same under all the laws: (1) A statement of the demand, after deducting all just credits and offsets. (2) The name of the owner, or reputed owner, and of the person by whom the claimant was employed. (3) The terms of employment. (4) A description of the property to be charged with the lien, sufficient for identification. (5) The notice to be verified by the oath of the claimant or some other person.[73]

In accordance with the principle of liberal construction of these requirements, the courts have not set aside the claim when the description of the property, or other details of the claim, was not full or precise. If the claimant states the name of the reputed owner, he does not lose his lien if some other person is the real owner. The law merely requires such a notice as could be prepared by the claimant without the help of a lawyer.[74] These rulings of the courts were given statutory sanction in the amendment of the codes of 1907 which provides, "No mistakes or errors in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to the claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the Court finds that such error in statement of the demands, credits, and offsets, or of the balance due, was made with the intent to defraud, or the Court shall find that the innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.'"[75]

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[72] *Corbett* v. *Chambers*, 109 Cal. 178. *Macomber* v. *Bigelow*, 126 Cal. 9.

[73] *Code of Civil Procedure*, Sec. 1187.

[74] *Hotaling* v. *Cronice*, 2 Cal. 60. *Tredinnick* v. *Red Cloud C. M.*, 72 Cal. 78. *Willamette S. M. Co.* v. *Kramer*, 94 Cal. 205. *Ah Louis* v. *Harwood*, 140 Cal. 504. *Corbett* v. *Chambers*, 109 Cal. 184.

The law is even less strict about the form of the unrecorded notice that may be given the owner, or his architect, prior to the time of filing the lien. No such notice is invalid by reason of any defect of form, provided it is sufficient to inform the owner of the substantial facts of money due for labor or materials furnished, *or to put him upon inquiry as to such matters.*[76]

(3) *Time of commencement of suit.*

After the notice of the intention to hold a lien against the property has been filed, it is necessary to bring suit for its enforcement. The time allowed for bringing this suit has been shortened. The 1850 law permitted the claim to bind the building for one year without suit; in 1855 this period was reduced to six months; and since 1868 no lien will bind a building or other improvement for a longer period than ninety days after the filing of the claim, unless suit is brought to enforce the same. This time may be extended if credit is given, but the law has allowed no lien to be continued in force for a longer period than two years from the time the work is completed, by any agreement to give credit.[77]

(4) *The costs of securing wages by means of mechanics' liens.*

It is evident that as early as 1855 the California laws aimed to charge the costs of the suit to enforce a lien against the property of the defendant. The law of that year and also subsequent amendments in 1858 and 1861 provide that in case of judgment awarding liens on a piece of property, it shall be sold in satisfaction of such liens and *the costs of the suit.*[78] In the statute of 1868 the provisions for the payment of costs were more explicit. It declared, "In all suits under this Act the Court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for filing and recording of the lien, and also a reasonable amount as attorney's fees."[79] Later laws stipulated that the amount of the attorneys' fees should not exceed one hundred dollars.[80] Since 1885 this right to costs and attorneys' fees has been quite definitely stated in the California Code of Civil Procedure. This section reads, "The Court must also allow as a part of the costs, the money paid for filing and recording the lien, and reasonable attorneys' fees in the Superior and Supreme Courts, such costs and attorneys' fees to be allowed to each lien claimant whose lien is established, whether he be plaintiff or defendant, or whether they all join in one action, or separate actions are consolidated."[81] By the amendment of 1907 this right to the payment of costs is forfeited in cases where a part of the claim is admitted to be due, and nevertheless the claimant brings suit and does not recover more than the amount so admitted.[82]

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[75] *Statutes of California and Amendments*, 1907, p. 858, Sec. 1203a.

[76] *Ibid.*, 1887, p. 154. *Code of Civil Procedure*, Sec. 1184. "Any of the persons mentioned in Sec. 1183, except the contractor, may at any time give to the reputed owner a written notice that they have performed labor or furnished material, or both, to the contractor, . . . or that they have agreed to do so, stating in general terms the kind of labor and materials, and the name of the person to or for whom the same was done or furnished, or both, and the amount in value as near as may be, of that already done or furnished, or both. Such notice may be given by delivering the same to the reputed owner personally, or by leaving it at his residence or place of business, with some person in charge, or by delivering it to his architects, or by leaving it at their residence or place of business with some person in charge, or by posting it in a conspicuous place upon the mining claim or improvement. No such notice shall be invalid by reason of any defect of form, provided it is sufficient to inform the reputed owner of the substantial matters herein provided for, or to put him upon inquiry as to such matters."

[77] *Code of Civil Procedure*, Sec. 1190.

The earlier California decisions sustained the validity of these provisions charging the costs and attorneys' fees of successful actions for the establishment and execution of liens to the defendant,[83] but this judgment has been reversed in a recent case in the supreme court.[84] In the decision attention was called to the fact that this section of the code provides for an attorneys' fee to the plaintiff but not to the defendant, even though the latter be successful in the action; and that attorneys' fees are allowed to plaintiffs only in actions under the mechanics' lien law. It was the opinion of the court that such a requirement violated the Fourteenth Amendment, in that it did not give "the equal protection of the laws to all"; and that it was also in conflict with the provisions of the state constitution which required that general laws should be uniform in action, and with the guarantee of the right to acquire and protect property. The opinion concludes, "A statute which gives an attorney's fee to one party in an action and denies it to the other, and allows such fee in one kind of action and not in other kinds of actions where, as in the statute here in question, the distinction is not founded on constitutional or natural differences, is clearly violative of the constitutional provisions above noticed."[85] Subsequent decisions in mechanics' lien cases have accepted this ruling in the matter of attorneys' fees.[86]

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[78] *Statutes of California,* 1867-8, p. 592, Sec. 10.

[79] *Ibid.,* 1855, p. 156, Sec. 8.

[80] *Code of Civil Procedure,* Sec. 1184.

[81] *Statutes of California and Amendments,* 1884-5, p. 146, Sec. 1195. *Code of Civil Procedure,* Sec. 1195.

[82] *Ibid.,* 1907, p. 322, Sec. 1207.

[83] *Peckham v. Fox,* 82 Pac. 92. *DeCamp v. Tolhurst,* 99 Cal. 635. *Reid v. Clay,* 134 Cal. 215.

[84] *Builders' Supply Co. v. O'Connor,* 150 Cal. 265.

FORFEITURE OF A MECHANICS' LIEN.

The right to a lien in payment of a debt for labor or material furnished is forfeited in two ways: (1) by failure to comply with the conditions which the law requires for establishing such claim; (2) by becoming a party to a false record or agreement with intent to defraud. The notice must be given or the claim recorded, and the suit commenced within the prescribed time, failing which the right to this purely statutory remedy is forfeited.[87] The forfeiture of the lien of the original contractor does not work a forfeiture of the claims of sub-contractors, material-men, and others contributing labor. If a false notice be given with no intent to defraud through a mistake or want of knowledge, the lien is not forfeited, as the law provides this penalty only for "wilfully" giving a false notice or filing a false claim.[88]

Neither the instituting of procedure to establish a lien, nor the forfeiting of the lien, has any effect on the right of the person attempting to collect the debt to commence a personal action against the debtor.[89]

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[85] *Builders' Supply Co. v. O'Connor*, pp. 268-9.

[86] *Morris v. Wilson*, 97 Cal. 646. *Spinney v. Griffith*, 98 Cal. 149.

[87] *Statutes of California and Amendments*, 1907, p. 858, Sec. 1203a.

[88] *Code of Civil Procedure*, Sec. 1202. Evidence of violation must be clear and convincing. *Schallert-Ganahl L. Co. v. Neal*, 91 Cal. 365.

The contractor or owner is not competent to make any contract or agreement waiving or impairing the liens of other persons, unless such persons give their written consent.[90] Thus an agreement in a lease that the land shall not be subject to liens for improvements is void for the purpose of defeating such claims. The owner can only protect it by giving the usual statutory notice disclaiming responsibility.

We see from this review that in order to meet all the conditions that may arise in our complex industrial life, it has been necessary to develop a somewhat intricate body of legal regulations of the process of establishing a right to this form of relief. Almost every session of the legislature has repealed some part of the old or added new regulations. Yet the requirements that must be met in order to invoke the help of these laws in collecting wages are not complex or difficult. It is merely necessary to file the notice of the lien claimed within thirty days of the time when the improvement is completed, and to institute suit within ninety days. Or, in case an extra precaution be deemed advisable, a written notice can be given the owner before the work is completed.

PREFERENCE GIVEN THE LIEN FOR WAGES.

A number of the mechanics' lien laws have sought, in the division of funds or settlement of lien claims, to give the preference to wages. As early as 1862 we find provisions stipulating that the claims of employees and material-men shall be settled before those of the contractor. The lien created by the act was to inure primarily to their benefit, and the contractor was to receive payment only after their claims had been settled.[91] The statute of 1868 was most explicit in its directions giving the preference to claims for wages and materials furnished. Its provisions were as follows: "In case the proceeds of any sale under this Act shall be insufficient to pay all lien holders under it, the liens of all persons other than the original contractor and sub-contractor shall first be paid in full, or pro rata, if the proceeds be insufficient to pay them in full; and out of the remainder, if any, the sub-contractors shall then be paid in full, or pro rata, if the remainder be insufficient to pay them in full; and the remainder, if any, shall be paid to the original contractor, and each claimant shall be entitled to execution for any balance due him after such distribution; such execution to be issued by the clerk of the court upon demand, after the return of the sheriff, or other officer making the sale, showing such balance due."[92]

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[89] *Palmer v. White*, 70 Cal. 221. *Bates v. Santa Barbara Co.*, 90 Cal. 548.

[90] *Statutes of California and Amendments*, 1884-5, p. 146. *Code of Civil Procedure*, Sec. 1201. Not applicable where contract price is less than $1000.

[91] *Statutes of California*, 1862, p. 384. See also the statute of 1858, which provides that sub-contractors, journeymen, laborers, and other persons performing labor, shall have a valid lien regardless of the claims of the contractor against the building.

The amendment of 1885 made a still further division of the claimants in favor of the wage-worker. Between 1868 and 1885 wages and materials had ranked together in the division of the proceeds of the sale, but since 1885 priority has been given to all persons performing manual labor on the building or other improvement.[93] The courts have refused, however, to recognize the validity of this attempt to create preferred claimants.[94]

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[92] *Statutes of California*, 1867-8, p. 591.

[93] *Statutes of California and Amendments*, 1885, p. 145, Sec. 1194.

[94] Sec. 1194, *Code of Civil Procedure*, is as follows: "In every case in which different liens are asserted against any property, the Court in its judgment must declare the rank of each lien, or class of liens, which shall be in the following order, *viz.*:

(1) All persons performing manual labor in, on, or about the same.
(2) Persons furnishing material.
(3) Sub-contractors.
(4) Original contractors.

And the proceeds of any sale of the property must be applied to each lien or class of liens in the order of its rank; and whenever in the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages."

Judge Belcher of the San Francisco Superior Court filed a decision on December 5, 1900, in which he declared that Sec. 1194 is unconstitutional to the extent that it attempts to create preferred classes of claimants, and is not equitable to all concerned. He quoted the section of the State Constitution which declares that, "Mechanics, material-men, and artisans, and laborers of every class shall have a lien, etc.," and claimed that the legislature was not authorized to declare which of these classes, to the exclusion of others, should be paid. . . . By the constitution the liens of all classes mentioned stand upon the same plane. (*Organized Labor*, December 8, 1900.)

We find then, as the result of our study of the development of the California mechanics' lien law, that its application has been extended to many lines of productive industry; that there are provisions which insure the retention of a fund for the payment of wages; and that, aside from this fund, the law maintains the property to which the lien may be charged in the same degree of freedom from other encumbrances that it had when the improvements began. The legal process for establishing the claim is as simple as need be, assuming ordinary care and intelligence. The laws have also charged the employer with the costs and attorneys' fees incurred in establishing claims to liens, and have given the preference to the claims for the payment of wages, though the courts have declared these latter provisions unconstitutional.

LAWS ALLOWING LIENS FOR VARIOUS FORMS OF SERVICE.

We have in our California codes a number of other measures which are closely akin to the mechanics' lien law, in that they authorize the sale of property in satisfaction of wages for services rendered. These laws apply to: (1) Various forms of personal property. (2) Logs. (3) Farming machinery. (4) Vessels and their cargoes.

The mechanics' lien law of 1850 provided that "Any mechanic or artisan who shall make, alter, or repair any article of personal property, at the request of the owner, or legal possessor of such property, shall have a lien on such property . . . for his work done and material furnished." From 1850 to 1907 the law allowed two months for the payment of such debts. If not paid in that time, the person holding the property could, after giving due notice, sell it at auction for the satisfaction of the debt.[95]

This section of the civil code was amended in 1907, extending the application of the provision, and decreasing the time allowed for payment.[96] The law now provides that "Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service." The law allows such a lien for the making, altering, or repairing of articles of personal property, for the care of livestock, for laundry work, and for the services of a veterinary surgeon. If the person entitled to the lien is not paid the debt within twenty days after it has become due, he may sell the property at auction after ten days' notice. The owner is entitled to the remainder of the proceeds of the sale, after the debt and the cost of keeping and selling the property have been paid.

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[95] *Statutes of California*, 1850, p. 213. This provision is also found in the statutes of 1855, 1856, 1862, and 1868. The law was embodied in the Civil Code, Sec. 3052.

[96] *Statutes of California and Amendments*, 1907, pp. 85-6, Sec. 3051, 3052.

The law which grants a laborer's lien on logs is merely an application of the principle which has been recognized in the laws granting liens on personal property since 1850. This measure for the protection of laborers in the lumber industry was first enacted in 1878,[97] and has been amended and re-enacted in 1880,[98] 1887,[99] 1901,[100] 1905.[101] In accordance with this section of the civil code, "A person who labors at cutting, hauling, rafting, or drawing logs, bolts or other timber, has a lien thereon for the amount due for his personal services, which takes precedence of all other claims, to continue for thirty days after the logs, bolts, or other timber arrive at the place of destination for sale or manufacture, while such logs, bolts, or timber are in the county in which such labor was performed." To retain the lien, suit must be brought within twenty days.

A similar law is the one granting liens on threshing machines and barley crushers to any person who performs labor in their operation. This was another of the numerous measures for the protection of wages enacted in 1885.[102] To enforce this lien, action must be brought within ten days of the time when the work ceases.

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[97] *Statutes of California*, 1877-8, p. 747.

[98] *Ibid.*, 1880, p. 38.

[99] *Statutes of California and Amendments*, 1886-7, p. 53.

[100] Embodied in the revised code of 1901, but declared unconstitutional because of a defect in the enacting clause.

[101] *Statutes of California and Amendments*, 1905, p. 619. *Civil Code*, Sec. 3065.

[102] *Statutes of California and Amendments*, 1884-5, p. 109. *Ibid.*, 1905, p. 618. *C. C.*, Sec. 3061.

The California laws also enforce the payment of the wages of mates and seamen by allowing them a lien on the ship where they have served and her freight.[103] This lien for wages is superior to all others that may attach to the vessel and her cargo. The law also provides that, "A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled."[104]

LAWS MAKING WAGES PREFERRED CLAIMS.

As we have already pointed out, the first well-organized labor movement in California bore fruit at its culmination in three important laws for the protection of the wage-workers of the State. We have already presented the important features of two of these laws, namely: the eight-hour law, and the mechanics' lien law. It remains to consider the third law, "An Act for the protection of the wages of labor."[105]

The benefits which this act conferred upon the wage-worker have never been lost, as its provisions were included in the codes of 1872, and have remained a part of the California laws ever since. By this measure the principle that the claim of the wage-earner should be given preference over all others, which had been partially recognized in the mechanics' lien laws, was greatly extended in its application. Since 1868, in all cases of assignment, execution, or attachment, the wages of mechanics, miners, salesmen, clerks, or laborers, for services rendered within sixty days prior, to an amount not exceeding one hundred dollars,[106] constitute preferred claims. In case of the death of the employer, such wages must be paid before any other claim, except funeral expenses, the expenses of the last sickness, the allowance to the widow and infant children, and the charges for administering the estate.[107]

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[103] *Civil Code*, Sec. 2056.

[104] *Ibid.*, Sec. 2052.

[105] *Statutes of California*, 1867-8, pp. 212-4.

[106] The Code of Civil Procedure of 1872 provided that the preferred claim should be for wages for ninety days prior to the attachment, execution, or assignment, not exceeding one hundred and fifty dollars. (*Statutes of California*, 1871-2, p. 205.) The amendments to the Code of Civil Procedure in 1873-4, p. 252, returned to the former provisions, which have been retained since then.

If the claim for wages is disputed, the claimant must commence an action within ten days,[108] and the officer must retain in his possession until the determination of such suit enough of the proceeds of the writ to satisfy the claim and costs. By an amendment of 1883 the claimant forfeits the costs if, in a case where the amount of the claim is disputed, he recovers only what was admitted to be due.[109] Where the claims exceed the amount available for their payment, then the money must be divided among the claimants in proportion to the amounts of their claims.[110]

When it can be shown that a man's earnings are necessary for the support of his family, his earnings are exempt from execution.[111]

A law was passed in 1872 making it a felony for any one employing laborers on the public works of the state or municipalities to withhold any portion of the wages due such laborers.[112] A minimum rate of two dollars per day has been fixed for all such work. The law requires that a stipulation to that effect shall be made a requirement of the contracts for state and municipal work.[113]

Our previous discussion of the laws for the protection of wages shows that the California legislators have tried to insure the payment of wages earned, and that in all legal actions they have given the preference to the claims of the wage-earner. They have paid the employees of the state fairly, and seen to it that such laborers received what was due them. They have decided that where necessary a man's wages must be reserved for the support of his family, even though he fail to pay his just debts. They have gone still further, and tried to protect the wages of the laborer from his own folly and weakness, by forbidding their payment in a saloon or bar-room.[114]

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[107] *Code of Civil Procedure*, Secs. 1204, 1205, 1206, as amended by Code Commissioners and adopted in 1907.

[108] *Statutes of California*, 1867-8, p. 589, Sec. 3, C. C. P., Sec. 1206.

[109] *Statutes of California and Amendments*, 1883, p. 47.

[110] *Ibid.*, 1901, p. 192.

[111] *Code of Civil Procedure*, 1872, p. 165, Sec. 690.

[112] *Statutes of California and Amendments*, 1905, p. 667. *Pol. Code*, Sec. 653d. See also *Statutes*, 1871-2, p. 951.

[113] *Statutes of California and Amendments*, 1897, p. 90.

FAILURE TO SECURE PROMPT CASH PAYMENT OF WAGES.

In one respect alone have the California laws failed to protect wages. This failure is not due to any lack of effort on the part of the legislators, but to the difficulty of finding a remedy that will stand the test of a Supreme Court decision. The "truck system" and the "time-check" still furnish means whereby the laborer in certain industries of the state is defrauded of a portion of his hard-earned wages. Several attempts have been made to abolish these evils, but as yet the California courts have refused to sanction any law that infringes on the right to contract for any and all forms of payment.

This was one of the first evils to attract the attention of the State Labor Commissioner. In his report of the investigation of the abuses in connection with the construction of the San Francisco seawall in 1885, Commissioner J. S. Enos found that only patrons of the company boarding-house could retain their places with a certain firm.[115]

Ten years later the report of Commissioner E. L. Fitzgerald shows that abuses of this kind were most flagrant and widespread. The lumber industry seems to afford the best opportunities for such impositions, as it is carried on in isolated communities where the men are peculiarly dependent on their employers. If we may judge by the numerous accounts published in the report of the Labor Bureau,[116] some of the lumber companies have availed themselves of every possible opportunity to rob their employees systematically. Not satisfied with the profits of the company store, boarding-house, and bar, an even more effective means of extortion was discovered. The monthly wages of the men were paid with time-checks due in thirty, sixty, or even ninety days. Those who had families to support, or needed ready money for other purposes, could obtain it only by cashing these checks at a heavy discount.

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[114] *Statutes of California and Amendments*, 1901, p. 660. *Pen. Code*, Sec. 680.

[115] The "Truck System," *Second Biennial Report, Bureau of Labor Statistics*, p. 332.

[116] Collection of Wages, and Time-Check System, *Seventh Biennial Report, Bureau of Labor Statistics*, pp. 72, 83.

An attempt was made in 1891 to remedy the irregularity and delays in the payment of wages, by the passage of a law requiring that, "Every corporation doing business in the State shall pay the mechanics and laborers employed by it the wages earned by and due them weekly or monthly, on such day in each week or month as shall be selected by said corporation."[117] The time-check was found a convenient expedient by which such corporations could comply with the letter of this law, without fulfilling its intent. The State Labor Commissioner in his Report for 1895-96 presented strong evidence of the magnitude of what he characterizes as "the dreadful curse known as the 'Time-Check System.'" He concludes his discussion of the evil with the statement that he has prepared a bill to be presented to the legislature which he hopes will meet with immediate approval.[118]

The legislators fulfilled his expectations, and passed the act compelling corporations to pay their employees monthly, in lawful money. The failure to make a monthly payment entitles the employee to a lien on the property of the corporation for wages and attorney's fees. No defense for the failure to make such payment is allowed except: (1) the wages not earned, (2) a valid assignment of wages, (3) a set-off or counter-claim, (4) absence at the time of payment. No corporation can require, and no employee can make an agreement for a longer period of payment. The wages are to be paid in lawful money, or in checks negotiable at face value on demand. The penalty for violating the act is a fine of $50 to $100 for each offense.[119]

When brought before the Supreme Court the law was declared unconstitutional for a number of reasons, the chief of which were the following:[120]

(1) It is class legislation, since the law applies only to corporations doing business in the state and to laborers in their employ.

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[117] *Statutes of California and Amendments*, 1891, p. 195.

[118] *Seventh Biennial Report, Bureau of Labor Statistics*, p. 91.

[119] *Statutes of California, etc.*, 1897, pp. 231-2.

[120] *Johnson v. Goodyear Mining Co.*, 127 Cal. 4-17.

(2) The rights of corporations are the same as those of individuals; there can be no reason why a corporation doing business in the state should have its property subjected to a lien unless the property of other persons in the state under like circumstances is subject to the same kind of a lien, or why corporations should be prohibited from making defenses which all other persons in the state may make, or why corporations should pay attorneys' fees or fines while all other persons under like circumstances are exempt from such fees or fines, or why such corporations have not the same rights to create liens and make contracts that all other persons in the state have.

(3) It gives a lien to laborers, without requiring a description of the property, or due notice of the lien.

The law of 1897 has since been passed upon in the United States Circuit Court of the Northern District of California.[121] This decision declared that the part of the law requiring corporations to pay what was due on a monthly pay-day was constitutional. It was pointed out that a statute affecting all persons of a certain class was a general law, and that since this law merely compelled the corporations to meet just obligations it could not be regarded as an attack on their property. The state legislature has the right to modify by general laws the rights and privileges granted the corporations of the state. The court maintained that,[122] "A classification of corporations imposing burdens different from those imposed upon the general public may be made without the statute encountering the prohibition of the state and Federal constitutions, provided such classification is made upon reasonable grounds, and is not merely an arbitrary selection." The question of the validity of the section of the law requiring money payments was not passed upon in the decision.

The California Supreme Court has quite clearly and emphatically declared that the laws may not restrict the right to contract for other than money payments. The section of the mechanics' lien law[123] which provides that, "As to all liens, except that of the contractor, the whole contract price shall be payable in money," was held to be an unconstitutional invasion of the right of the owner to the use of his property. This right is invaded if he is not at liberty to contract with others respecting the use to which he may subject his property, or the manner in which he may enjoy it. The legislature could with equal right require that all sales of merchandise be made on these terms.[124]

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[121] *Skinner v. Garnett Gold Mining Co.*, 96 Fed. Rep. 735.

[122] *Ibid.*, p. 745-6.

[123] *Code of Civil Procedure*, Sec. 1184.

Plans are being made to present in the coming session of the legislature a bill embodying another attempt to do away with the deferred payment of wages, and the time-check evils. It is evident when one considers the past decisions of the Supreme Court that it will be a difficult task to devise legislation eradicating the remaining abuses in the payment of wages, and so complete the legislation for the protection of the wages of the working men and women of California.

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[124] *Stimson Mill Co.* v. *Braun*, 136 Cal. 124-5.

CHAPTER IX.

LAWS REGULATING THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE.

INFLUENCE OF THE COMMON LAW OF ENGLAND.

The relationship of employer and employee, or, to use the good old Anglo-Saxon terms, of master and servant, is one of those fundamental social ties which has been regulated in the United States by that great body of organized common sense and social usage known as the Common Law of England. The California legislature formally declared in 1850 that, "The Common Law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the courts of this State."[1] The courts held that this meant the common law as modified by the United States decisions. As these varied somewhat with the different states, the judges had some latitude in the selection of precedents to be followed. The statutes of the state were translated into Spanish for the benefit of its older citizens; but no effort was made to make available information concerning the common law. For over twenty years many of the most fundamental relationships of the people of the state were regulated by this somewhat vaguely defined, unwritten mass of English law and United States decisions.

As this caused great inconvenience to the courts and their litigants, a commission was appointed to draw up the California codes which were adopted in 1872. A large part of these codes was copied literally from the New York codes of 1862. With the exception of one section,[2] this was true of all that part of the Civil Code dealing with the relationship of master and servant.

As might be expected, when one considers the ancient origin of these portions of our legal system, there is evidence of the transition, as yet incomplete, from the earlier personal relationship of master and servant, to the modern purely contractual relationship that is sometimes designated by the same terms, and again as *employer* and *employee.* As defined in the code, "A servant is one who is employed to render personal service to his employer, and otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter who is called his master,"[3] and, "The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person."[4] The latter includes the former relationship, and also those of contractor and agent, which have a somewhat different legal status. Both the contractor and the agent perform services, but the former is not under the control and direction of his employer while performing the services,[5] and the latter not only acts for, but may also act in the place of his principal.[6] In this study we are dealing with the more restricted relationship, where the employee or servant performs the labor under the control and direction of the employer or master, or of his representative.

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[1] *Statutes of California*, 1850, p. 219.

[2] *Civil Code*, Sec. 2011.

We will consider our subject under the following general topics:

(1) Terms of the labor contract.

(2) Lawful termination of the relationship of master and servant.

(3) Damages for violation of the labor contract.

(4) Obligations of the servant or employee.

(5) Obligations of the master, and his liability for the injury to his servant.

(1) TERMS OF THE LABOR CONTRACT.

At the commencement of the service some agreement is generally made as to its terms. Where no definite period is stipulated, the law assumes that the hiring is "for such length of time as the parties adopt for the estimation of the wages. A hiring for a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring for piece-work for no specified time."[7] "In the absence of any agreement or custom as to the terms of service, the time of payment, or rate of value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed."[8]

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[3] *Civil Code*, Sec. 2009.

[4] *Ibid.*, Sec. 1965.

[5] *Boswell* v. *Laird*, 8 Cal. 489.

[6] *People* v. *Treadwell*, 69 Cal. 236. *Sumner* v. *Nevin*, 87 Pac. Rep. 1105.

In case there is a definite contract covering the length of the service, either party is liable for damages for its violation,[9] though the law will not enforce such a contract against the employee for a longer time than two years.[10] Under the provisions of the code as amended in 1907,[10a] the law also refuses to recognize any agreement by which the employee forfeits his right to damages for injuries.

If, after the expiration of the term of service, the parties continue the relationship of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.[11] When the employee voluntarily continues his services beyond the period of two years, the original contract may be referred to as affording a presumptive measure of the compensation.[12] No compensation beyond that specified in the contract can be recovered by a person employed on a regular salary, unless he proves an agreement to pay extra for extra services.[13]

(2) TERMINATION OF SERVICES.

When the employment is for no specified term, it may be terminated by either party on notice to the other.[14] The courts have held that an agreement to employ a person permanently means nothing more than that the employment is to continue indefinitely, and that under such circumstances it may be terminated at the will of either party.[15]

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[7] *Civil Code*, Sec. 2010. *Rosenberger v. Pac. Coast R. Co.*, 111 Cal. 318.

[8] *Civil Code*, Sec. 2011.

[9] The employee is liable to damages, though he cannot be forced to fulfill a contract of personal services.

[10] *Civil Code*, Sec. 1980.

[10a] *Statutes of California and Amendments*, 1907, p. 120.

[11] *Civil Code*, Sec. 2012. *Gabriel v. Bank of Suisun*, 145 Cal. 266; *Stone v. Bancroft*, 139 Cal. 81-2; *Hermann v. Littlefield*, 109 Cal. 432.

[12] *Civil Code*, Sec. 1980; *Stone v. Bancroft*, 139 Cal. 81-2.

[13] *Cany v. Halleck*, 9 Cal. 198.

[14] *Civil Code*, Sec. 1999.

Where the employment is for a specified term, it may be terminated by the master or employer for the following reasons:

(1) Willful breach of duty on the part of the employee.[16]

(2) Neglect of duty, or continued incapacity to perform it.

(3) If the servant is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,[17]

(4) If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have employed him.[18] The employee also has a right to terminate the service at any time, if the master commits a willful or permanent breach of his obligations.[19]

The code makes the following provisions for compensation in cases of premature severing of the relationship: "An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract."[20] "An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance."[21]

Other ways in which the service may be terminated are:[22]

(1) By the expiration of its appointed term;

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[15] *Lord* v. *Goldberger*, 81 Cal. 596. *Davidson* v. *Laughlin*, 138 Cal. 320.

[16] *Civil Code*, Sec. 2000.

[17] *Ibid.*, Sec. 2015.

[18] *Ibid.*, Sec. 2015.

[19] *Ibid.*, Sec. 2001.

[20] *Ibid.*, Sec. 2002. *Hartman* v. *Rogers*, 69 Cal. 646.

[21] *Civil Code*, Sec. 2003.

[22] *Ibid.*, Secs. 1996, 1997, 1998.

(2) By the extinction of its subject;

(3) By the death of either party;

(4) By the legal incapacity of either party to fulfill his part of the relationship.

There are some exceptions to the rule that death terminates the employment. Where the services are rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the services to be rendered are such as he can rightly perform without the aid of the deceased person.[23] Also, the law requires an employee to continue his services after the death or incapacity of his employer, where such services are necessary for the protection of the property, or other interests of his employer's successor.[24] On the other hand, it has been held that an unexpired contract of employment between a copartnership and an employee for a fixed period, at a fixed salary, is dissolved by the death of one of the partners during the term of the hiring.[25]

(3) DAMAGES FOR VIOLATION OF THE LABOR CONTRACT.

There are two principles which regulate the recovery of damages for violation of the contract of employment:[26]

(1) It must be shown that damages were actually sustained.

(2) The contract furnishes the measure of damages.

While the contract price is the *prima facie* measure of the injury sustained, the damages may be increased or diminished, according as the proof shows that the plaintiff has sustained an actual loss greater or less than the contract price.[27] If the employee violates the contract, and his employer is obliged to pay more than the contract price in order to have the work done, then this extra sum is the amount of the damages sustained.[28] The employer who breaks such a contract is liable to the employee for his actual loss and outlay incurred in making preparations for the work, and for the loss due to idleness. It is the duty of an employee who is wrongfully discharged to seek other opportunities to work, and thus lessen the amount of damages sustained.[29] If he fails to do so, the burden of proving that he could have obtained suitable employment but refused to seek or accept it, and thus diminish the damages sustained, is on the defendant.[30] When the employee remains idle, though willing to do the work contracted for, the employer is liable for the wages of the entire unexpired period of the contract.[31]

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[23] *Civil Code*, Sec. 1991.

[24] *Ibid.*, Sec. 1998; *Weithoff* v. *Murray*, 76 Cal. 508.

[25] *Louis* v. *Elfelt*, 89 Cal. 547.

[26] *Utter* v. *Chapman*, 38 Cal. 662.

[27] *Ibid.*, p. 554. *Cedenberg* v. *Oobison*, 100 Cal. 93.

[28] *Utter* v. *Chapman*, 38 Cal. 664.

(4) OBLIGATIONS OF THE SERVANT OR EMPLOYEE.

The provisions of the code seem to recognize three degrees of care and diligence in the performance of services. First, where one is employed at his own request to do that which is more for his own advantage than for that of his employer. Such a situation demands great care and diligence to protect the interests of the employer.[32] Second, when one agrees to perform a service for a good consideration, such service must be performed with ordinary care and diligence, with the exercise of such skill as the employee possesses.[33] Third, where the service is gratuitous, it is provided, "One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein."[34] If the person has undertaken this gratuitous service by his own special request, then he must perform the same fully. "A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so."[35] If the servant is guilty of culpable negligence in the performance of his duties, then he is liable to the employer for damages caused by such negligence, and he can recover payment only for such services as are properly rendered.[36]

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[29] *Polack* v. *McGrath*, 38 Cal. 666. *Rosenberger* v. *Pac. Coast Ry. Co.*, 111 Cal. 318. *Stone* v. *Bancroft*, 139 Cal. 81. *Utter* v. *Chapman*, 38 Cal. 659.

[30] *Rosenberger* v. *Pac. Coast Ry. Co.*, 111 Cal. 318.

[31] *Webster* v. *Wade*, 19 Cal. 291.

[32] *Civil Code*, Sec. 1979.

[33] *Ibid.*, Secs. 1978, 1983, 1984.

[34] *Ibid.*, Sec. 1975.

[35] *Ibid.*, Sec. 1977.

In the performance of his services the employee must comply with the directions of his employer, except when such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.[37] In the absence of instructions he must do the work in conformity to the usage of the place, unless this is manifestly impracticable, or injurious to the employer.[38]

The law forbids an employee seeking to promote his own private interests in preference to those of his employer by the use of knowledge gained or opportunity discovered in the course of his employment.[39] All that he acquires *by virtue of his employment*, even though it be an unlawful gain, or is obtained after the expiration of the term of his service, belongs to the employer.[40] If the employee has any business transactions on his own account similar to those of his employer, he must give the preference to the interests of the latter.[41]

In the matter of rendering an account, the law recognizes a difference in the obligations of "mere servants" and employees. The former "must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand";[42] while the latter is only obliged to deliver on demand, though the law provides that he must give prompt notice to his employer of everything which he receives for his account.[43]

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[36] *Civil Code*, Sec. 1990.

[37] *Ibid.*, Sec. 1981.

[38] *Ibid.*, Sec. 1982.

[39] *Gower* v. *Andrews*, 59 Cal. 119.

[40] *Civil Code*, 1985. In a case where a man engaged in grading on public land found some gold, it was held, "Had the object of the grading been the acquisition of the ores to be extracted, the provision would, no doubt, apply; but the casual finding of gold by an employee in the course of an employment in no way related to such an object, though doubtless an acquisition made by reason or cause of the employment, cannot with propriety be said to have been by virtue of it." (*Burns* v. *Clark*, 133 Cal. 639.)

[41] "We understand it to be the duty of the employee to devote his entire acts, so far as his acts may affect the business of his employer, to the interests and service of the employer; that he can engage in no business detrimental to the business of the employer; that he should in no case be permitted to do for his own benefit that which would have the effect of destroying the business to sustain and carry on which his services have been secured. . . . An agent or sub-agent who uses the information he has obtained in the course of his agency as a means of buying for himself, will be compelled to convey to the principal." (*Gower* v. *Andrew*, 59 Cal. 123-4.)

[42] *Civil Code*, Sec. 2014.

(5) OBLIGATIONS OF THE MASTER AND HIS LIABILITY FOR THE INJURY OF THE SERVANT.

Among all civilized peoples there is a tendency to increase the legal obligations of those who utilize the labor of their fellow-men in business enterprises. While no state in the Union has gone so far as certain nations of Europe in this respect, yet both the decisions of the courts and the statutory enactments indicate an increasing tendency to hold the employer responsible for the injuries incurred by those assisting him in his business. In California this tendency is shown by the strictness with which the courts have interpreted the legal obligations of the employer, and by the important amendments to the civil code which were secured by the efforts of the labor organizations in 1907.

The law charges the employer with certain legal obligations and holds him liable for any injuries that may result from the failure to fulfill these requirements:[44]

(1) He must exercise reasonable care to furnish safe appliances and places of work.

(2) He must show the same care in the selection of fellow-servants.

(3) He must inform his employees of any danger connected with the business; giving particular attention to the instruction of youthful and inexperienced employees.

(1) *Obligation to furnish safe appliances and place of work.*

More than half of the decisions against the employer rendered by the Supreme Court of California are based upon the failure to meet this first requirement of reasonable care to insure safe conditions of work.[45] Different degrees of responsibility of the employer for the safety of the implements of work are recognized in the opinions of the courts:

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[43] *Civil Code,* Secs. 1986, 1987.

[44] *Ibid.,* Secs. 1969, 1971.

[45] Out of fifty-eight decisions for the employee, thirty-four were granted because of this failure.

(1) Where suitable materials have been furnished for constructing safe appliances and it is the duty of the employee to construct his own implements, he cannot recover for injuries due to his own negligence, or the negligence of a fellow-servant,[46] unless the latter was acting as a vice-principal.[47]

(2) In many occupations it is a part of the duty of the employees to keep the machines in proper condition for work, by oiling them, sharpening certain parts, or adjusting belts. If the employer has furnished the necessary appliances, he cannot be held liable for accidents due to the neglect to perform such duties,[48] unless the neglect was that of an employee acting as a vice-principal.[49]

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[46] In an accident due to the failure of the employee to put in the necessary staples to hold a load on a flat-car the court ruled: "It is well settled that where certain persons are employed to do certain work, and by the contract of employment, either express or implied, such employees are to construct and adjust the appliances by which the work is to be done, the employer to furnish the proper materials and the employees to construct and adjust such appliances as in their judgment are necessary, the employer is not liable *to such employees* for any defect in the *construction* or *adjustment* of such appliances." (*Kerrigan* v. *Market Street Ry. Co.*, 138 Cal. 511. *Leishman* v. *Union Iron Works*, 148 Cal. 274. *Burns* v. *Sennett & Miller*, 99 Cal. 373.)

[47] By the amendments to the code in 1907, the duty and the neglect must be that of the individual workman in order to exempt the employer from liability, for the law now holds the employer responsible for the neglect of any employee who had the right to direct the injured servant. (*Statutes of California and Amendments*, 1907, Sec. 1970, p. 119.) Prior to these amendments the Supreme Court shows a strong tendency to emphasize the doctrine of vice-principal. In the case of an accident due to the use of an insecure clamp to move iron, the court declared, "In either case [whether furnished by the defendants personally or by their employer] the furnishing of such unsafe appliance would be the negligence of the defendants; for the reason that the duty of the employer to furnish the employee with safe and suitable appliances is a personal one, and cannot be delegated so as to shift the responsibility to any agent or servant; . . . the defendants cannot avoid the responsibility for such negligence on the ground that it was the negligence of a fellow-servant; for in so far as the duty to furnish reasonably safe and suitable appliances is concerned, the employee furnishing said appliance was not under the law a fellow-servant of the plaintiff, although as to the performance of other services he may have been a fellow-servant of the plaintiff." (*Wall* v. *Marshutz & Cantrel*, 138 Cal. 526.)

[48] "The servants cannot furnish the machines. That is the master's right and duty, but the servant who uses them can and should keep them in order for their proper and safe daily use when furnished with the necessary means of so doing and when perfectly capable of correcting the defect." (*Cregan* v. *Marston*, 126 N. Y. 568; quoted with approval in *Helling* v. *Schindler*, 145 Cal. 309.)

[49] "It must be taken as absolutely settled in this state that it is not the grade of service which fixes the master's responsibility in case of accident. It is the character of the act. That is to say, if it be an act

(3) If the workmen are not charged with the duty of constructing and caring for their implements, then the employer is held responsible for the character of the appliances and their safe condition. He must not only exercise reasonable care to provide safe machinery, but is also responsible for its inspection and maintenance in a safe condition.[50]

These requirements of reasonable care to provide safe conditions of work do not mean that the master insures his servant against injury.[51] The decisions clearly recognize the possibility of unavoidable accidents,[52] or of latent defects in the machinery

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the duty for the performance of which belongs in law to the master, if the performance be delegated to the least of his servants or to the greatest, in either case, and in any case, the master is responsible, unless that act be performed with due care." (*Skelton* v. *Pacific Lumber Co.*, 140 Cal. 511.)

[50] "The master, whether a corporation or an individual, is bound to furnish its employees safe materials and structures. This includes the obligation to keep in repair. The employee has a right to assume that the master has discharged this obligation." (*Beeson* v. *Green Mt. G. M. Co.*, 57 Cal. 29.)

"The law is settled beyond controversy that it is the duty of an employer to furnish a suitable and safe place for his employee to work, and suitable and safe appliances and machinery for him to work with, and this duty cannot be delegated to another so as to exonerate the employer from liability to an employee who is injured in consequence of the omission to properly perform the act or duty, whether that other is a superior officer, agent, or servant, or a subordinate or inferior agent or servant." (*Mullen* v. *Cal. Horseshoe Co.*, 105 Cal. 83.)

"The duty of inspection is affirmative and it must be continuously fulfilled and positively performed. In ascertaining whether this has been done or not, the character of the business should be considered, and anything short of this would not be ordinary care." (*Dyas* v. *So. Pac. Co.*, 140 Cal. 308-9.)

"Again, the master is required to use the same care in inspection and supervision of the appliance, for the purpose of discerning defects that may subsequently occur therein, as is required of him originally in furnishing the appliance or instrument. To defeat the servant's right of recovery he must not only be aware of the defect in the appliance, but know and appreciate the risks and dangers resulting or likely to result from such defects." (*Alexander* v. *Central Lumber and Milling Co.*, 104 Cal. 539.)

See also *Bowman* v. *White*, 110 Cal. 23; *Jager* v. *Cal. B. Co.*, 104 Cal. 546; *Pacheco* v. *Judson Mfg. Co.*, 113 Cal. 545.

[51] *Malone* v. *Hawley*, 46 Cal. 409.

[52] In *Lindell* v. *Bode*, 72 Cal. 247, the judgment of the lower court was reversed because of this erroneous instruction to the jury, "Where, in the due exercise of his duties, the employee is injured through any appliances or surroundings of the business, and it does not appear that the employee was in fault, the burden is on the employer to show that he himself was free from fault." This instruction was objected to on the ground that it took from the jury the consideration of whether the accident was unavoidable. See also *Stein* v. *Williamson*, 92 Cal. 65.

that could not have been discovered with ordinary care.[53] Nor does the law require that the employer shall adopt every new invention or improvement, even though they might have given greater security to his workmen.[54]

(2) *Care in the selection of fellow-servants.*

As the negligence of fellow-servants is often the cause of injury, the law also requires that the employer shall exercise reasonable care in their selection. In very few cases in the California courts has want of care in selecting employees been charged as the ground upon which damages were claimed. The courts have held that one act of negligence will not establish an unreliable character for an employee.[55] There seems to be no clear rule as to disqualification for employment, or as to what constitutes "reasonable care" in the selection of fellow-servants. Evidently these are questions that must be decided by the jury from the facts of particular cases.[56]

(3) *Obligation to give instructions about the dangers.*

The failure to give proper warning of the dangers connected with the work has frequently been the plea on which California employers have been compelled to pay heavy damages for injuries to employees. Judging from the number of such cases decided in the Supreme Court of the state, it would certainly be prudent for every large establishment to give careful attention to this educational obligation.

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[53] "When the employer exercises all the care and caution which a prudent man would ordinarily take for the safety and protection of his own person under the same circumstances, he cannot be held liable for the consequences of a defect in the machinery or appliances used." (*Brymer* v. *Pac. Co.*, 90 Cal. 498.) Another case where it was held that the defect was not perceptible is *McCall* v. *Pac. M. S. S. Co.*, 123 Cal. 42.

[54] "The master is not bound to adopt every latest improvement in machinery, nor is he liable for an accident which would not have occurred if such improvements had been adopted. If at the time of its selection the appliance in question was the only one in general use, . . . and was reasonably adapted to the purpose for which it was employed, its selection or its subsequent retention would not of itself indicate negligence, nor would the fact that better ones were used by others, or that later devices had overcome defects that experience had shown this one possessed, be proof of negligence in the continuance of its use." (*Sappenfield* v. *Main St. R. R. Co.*, 91 Cal. 57.)

[55] *Holland* v. *So. Pac. Co.*, 100 Cal. 240.

[56] *Gier* v. *Los Angeles C. S. R. Co.*, 108 Cal. 240, gives a good discussion of the subject.

The servant is entitled to information of all risks known to his master.[57] It is the duty of the employer not merely to inform him of such dangers, but also to give him such instruction as will insure an understanding of the risks incurred, and enable him to take the precautions necessary to prevent injury in the discharge of his duties.[58] The courts emphasize most strongly this obligation of instruction and warning in cases where minors are exposed to injury from dangerous machinery or conditions of labor, as their youth and inexperience render them peculiarly liable to accidents.[59]

EMPLOYERS' LIABILITY FOR INJURY TO THE EMPLOYEE.

When the employer fails to fulfill these obligations of care in providing a safe place and appliances of work, in selecting suitable fellow-servants, and in giving the warning and instruction necessary to enable the workmen to avoid dangers that are inevitable, then he becomes liable to damages if injuries result from such negligence.

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[57] "The nature or character of the agency or means through the danger or injury to the employee is to be apprehended can make no difference in the rule, for the employee is entitled in all cases to such information upon the subject as the employer may possess, and this with a view to enable him to determine for himself if at the proffered compensation he be willing to assume the risk and incur the hazard of the business; and if the employer have such information or knowledge and withhold it from the employee and the latter afterwards be injured in consequence thereof, the employer is liable to him in damages therefor." (*Baxter v. Roberts*, 44 Cal. 193.)

[58] "We think it is now clearly settled that if a master employs a servant to work in a dangerous place, or where the mode of doing the work is dangerous and apparent to a person of capacity and knowledge of the subject, yet if the servant employed to do work of such a dangerous character, or in a dangerous place, from youth, inexperience, ignorance, or want of general capacity, may fail to appreciate the dangers, it is a breach of duty on the part of the master to expose a servant of such character, even with his own consent, to such dangers unless he first gives him such instructions or cautions as will enable him to comprehend them, and do his work safely with proper care on his part." Quoted with approval from a Wisconsin case, *Mansfield v. Eagle Box, etc., Co.*, 136 Cal. 625. See also *Ingerman v. Moore*, 90 Cal. 410; *Ryan v. Los Angeles Ice & C. S. Co.*, 112 Cal. 244; *Verdelli v. Gray's Harbor Com. Co.*, 115 Cal. 517.

[59] "'Where the servant has equal knowledge with the master of the danger incident to the work, he takes the risk upon himself if he goes on with it.' This doctrine presupposes that the servant has sufficient discretion to appreciate the dangers incident to the work, and has no application to the case of young and inexperienced children. In such a case it is the duty of the master not only to warn the child, but to instruct him as to the dangers of the employment and the means of avoiding them." (*Fisk v. Cen. Pac. R. R. Co.*, 72 Cal. 43; *Mullin v. Cal. Horseshoe Co.*, 105 Cal. 77; *O'Connor v. Golden Gate Woolen Mfg. Co.*, 135 Cal. 537; *Grijalva v. S. P. Co.*, 137 Cal. 569.)

In the early days of placer mining, and individual ownership of the commercial and manufacturing enterprises of the state, very few cases of employers' liability were brought to the California courts. Only twelve of these cases are found in the Supreme Court records prior to 1880. Since then there have been great changes in the economic conditions of the state. The deep mining carried on by blasting, an increased use of high-power machinery, greater difficulties connected with the supervision of the larger factories, the utilization of less intelligent and skillful workmen made possible by the minute division of labor, the impossibility of fixing responsibility in the vast industries, or systems of transportation controlled by corporations, and the growth of an intricate system of sub-contracting, have each tended to multiply the risks of the employees, and to increase the difficulty of establishing claims of damages for injuries.

It is probable that the increased number of cases is also due to the employees attaining a greater knowledge of their legal rights and a stronger disposition and greater ability to maintain them, as a result of the extensive development of the trade-unions.

As already pointed out, the sections of the California codes dealing with the relations of master and servant were taken from the English common law, as embodied in the New York codes. Aside from some unimportant changes made in 1874, no valid amendments[60] were made to these sections until 1903. These laws were the product of an economic system characterized by the use of hand tools, and an intimate personal relationship between the master and servant. It has been necessary to depend on the decisions of the courts to adjust them to the more complex conditions of modern industry. While these decisions show development in favor of the better protection of the employees, definite statutory enactment was needed to overcome the defects to which were due many decisions which have failed to give the legal protection that civilized people now expect from the state.

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[60] The amendments of 1901 were declared unconstitutional. (*Lewis v. Dunne*, 134 Cal. 291.)

The rulings of the courts refusing to permit the recovery of damages for injuries due to the negligence of fellow-employees who had the right to direct the injured servant, or who worked in a different department from him, and the decisions refusing redress because the danger was known to the person injured, have given rise to the greatest criticism. We will examine some of these cases for the purpose of making clear the evils which the legislation of 1903 and 1907 sought to remedy.

RECOGNITION OF THE DOCTRINE OF VICE-PRINCIPAL BY THE CALIFORNIA COURTS.

The first case[61] presenting to the California Supreme Court the question of liability for the negligence of a fellow-employee who was also in charge of the work, or who was acting in the capacity of a vice-principal, occurred in 1876. A man named McLean, in the employ of the Blue Point Gravel Mining Co., was injured by a blast fired by one Kegan, a foreman of the company, who had the power to hire and discharge employees. In deciding this case the court declared, "The law of the state respecting this subject, as set forth in the Code referred to,[62] recognizes no distinction growing out of the grades of employment of the respective employees; nor does it give any effect to the circumstance that the fellow-servant, through whose negligence the injury came, was the superior of the plaintiff in the general service in which they were, in common, engaged, and the alleged distinction in this respect insisted upon by the appellant's counsel, founded, as he claims, on general principles of law and adjudged cases, requires no examination at our hands."[63]

The same question came before the Supreme Court again in

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[61] There are several cases involving the question of liability for the acts of a simple fellow-servant prior to this time. *Conlon v. S. F. & S. J. R. R. Co.*, 36 Cal. 404; *Yeoman v. Contra Costa S. N. Co.*, 44 Cal. 72; *Collier v. Steinhart*, 51 Cal. 116.

[62] *Civil Code*, Sec. 1970, prior to the amendment of 1903, read: "An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee." Taken from Sec. 811 of the New York Code of 1862.

[63] *McLean v. Blue Point Gravel Co.*, 51 Cal. 255.

1880. The widow of a man whose death was due to the neglect of the superintendent of a mine to make safe an appliance constructed under his supervision,[64] had been awarded eight thousand dollars by the lower court. The defendant appealed from this decision. The counsel for the respondent called attention to the criticism of the California decisions under Sec. 1970 of the Civil Code in a work on negligence, in which it was declared that they were not in accordance with the views of many American courts as to what the common law is. These had held that, "Where the master delegates to an agent the entire control of the business, including the power to employ and discharge servants, such agent is not a fellow-servant with those whom he employs, but is the representative of the master in such a sense that his negligence is the master's negligence."[65] The court adopted this view, and held in this case that where the business was in charge of an employee, then the principal was liable for the negligence of such a middleman, and declared that the superintendent was not a fellow-servant of the men whom he employed to work in the mine.[66] Following this decision, there have been a number of cases where the courts have held that a person who has entire charge in the absence of the principal, and who has the right to employ and discharge, is not the fellow-servant of his subordinates.[67]

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[64] It will be seen that the point at issue in the two cases is not quite the same. In *McLean v. Blue Point Gravel Co.* the accident was due to the negligent performance of an act in the course of the business, while in the later case the superintendent failed to exercise care in the performance of a duty which the law charges to the employer. But in both cases the doctrine of vice-principal is clearly stated and ruled upon by the court. *Beeson v. Green Mt. Gold Mining Co.*, 57 Cal. 20.

[65] *Beeson v. Green Mt. Gold Mining Co.*, 57 Cal. 24.

[66] "Whenever the nature of the business is such as to involve the appointment of subalterns by middlemen, and to withhold the principal from the management of the business, then the principal is liable for the negligence of the middleman in making the appointments, on the ground that the negligence is that of the principal, and not of a fellow-servant of the plaintiff. *A fortiori* is this the case where the middleman has the direct authority to make such appointments; otherwise it is hard to see in what case a corporation, which appoints and dismisses only through a general superintendent, can be liable for negligence." (*Beeson v. Green Mt. Gold Mining Co.*, 57 Cal. 30.)

[67] *Brown v. Sennett*, 68 Cal. 229; *McCune v. Cal. S. R. Co.*, 66 Cal. 305; *Ryan v. Los Angeles I. & C. S. Co.*, 112 Cal. 254; *Higgins v. Williams*, 114 Cal. 182.

In *Foley v. Cal. Horseshoe Co.*, 115 Cal. 195, it was held that an assistant foreman and a boy under his control, subject to his orders, were not fellow-servants so as to relieve the common employer from damages for injuries due to the neglect of the assistant foreman.

We have already pointed out the recognition which the California courts have given to the doctrine of vice-principal in cases of the negligence of an employee in the discharge of duties which are a part of the legal obligations of the employer. When it is a question of furnishing suitable appliances, or a safe place of work, or of giving information of the dangers incurred in the business, then the person discharging such duties is not a fellow-servant, but acts for the principal.[88] This is true even in the case of an employee who in all other respects holds a subordinate position.

The California courts refused to extend the application of this doctrine of vice-principal so that it would include all employees who had the right of direction or control. They repeatedly held that a foreman was the fellow-servant of the men under his control. In cases where the neglect of the foreman to give notice of blasting, or to close an open switch, or to put proper timbers in a tunnel, resulted in the death or serious injury of the workmen under his control, the Supreme Court refused to allow damages, on the ground that the law permitted no recovery for accidents due to the negligence of a fellow-servant.[69]

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[88] "If the act was one which it was the duty of the employer to perform towards its servants, and one of them negligently performed it to the injury of another servant in the same common employment, then the offending servant in the performance of such duty acted as the representative or agent of his employer, for which the employer is responsible. . . . Was then the act or omission which caused the injury a personal duty which the defendant corporation owed to the deceased while he was engaged in the performance of his duties as its employee? If it was, then the deceased was not at fault, then the corporate defendant is liable, otherwise not." (*Daves* v. *Southern Pac. Co.*, 98 Cal. 24.)

A carpenter who makes the scaffold used by his fellow-workmen is not their fellow-servant in so far as the construction of the scaffold is concerned, but represents his employer who is liable for negligence in the making of such a scaffold. (*McNamara* v. *McDonough*, 102 Cal. 582. Compare *Noyes* v. *Wood*, 102 Cal. 393, a case where the court refused to allow recovery for the negligence of a foreman of painters in construction of a scaffold.)

"It must be taken as absolutely settled in this state that it is not the grade of service which fixes the master's responsibility in case of accident. It is the character of the act. That is to say, if it be an act the duty for the performance of which belongs in law to the master, if the performance be delegated to the least of his servants or to the greatest, in either case, and in any case, the master is responsible, unless that act be performed with due care; . . . if the act be one which it was the duty of the employer to perform, and one of the servants negligently performs it to the injury of another servant in the same common employment, then the offending servant in the performance of this duty acts as the representative or agent of his employer, and the employer is responsible." (*Skelton* v. *Pac. Lumber Co.*, 140 Cal. 511.)

See also *Congrave* v. *Southern Pac. Co.*, 88 Cal. 369; *Elledge* v. *National and O. R. Co.*, 100 Cal. 291; *Nixon* v. *Selby S. & L. Co.*, 102 Cal. 458; *Beeson* v. *Green Mt. G. M. Co.*, 57 Cal. 20.

GREAT EXTENT OF APPLICATION OF THE FELLOW-SERVANT RULINGS.

The refusal to hold the employer liable for injuries due to the negligence of a fellow-servant has also worked great hardships in many cases in which men have been injured through the negligence of others employed in a different line of work, or in another department of the same general business. The laborer shoveling snow from the railroad track was held to be the fellow-servant of the conductor of the train that ran over him;[70] the miners working in the bottom of the shaft were fellow-servants of the careless engineer who let the buckets or timbers fall upon them;[71] the man hired to repair an elevator shaft was the fellow-servant of the heedless operator who started the elevator without warning;[72] the ignorant child was the fellow-servant of the thoughtless workman who sent him to dangerous and unaccustomed work;[73] the employee in the steward's department was the fellow-servant of the ship's mate;[74] as the industries of the state have grown in extent and complexity of organization, the workmen have multiplied their associates, until in many instances they are exposed to accidents due to the negligence of one or more of an army of fellow-servants, whose characters and abilities are necessarily unknown. The time-worn legal fiction that justifies exemption from liability in such cases by the claim that the workmen know the conditions under which their work must be done, and have voluntarily assumed the risks, has no justification in the facts, when applied to the vast, highly organized, industries of modern times.

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[69] *Stephens* v. *Doe*, 73 Cal. 26; *Donovan* v. *Ferris*, 128 Cal. 48; *Daves* v. *S. P. Co.*, 98 Cal. 19.

[70] *Fagundes* v. *Central Pac. Co.*, 79 Cal. 97.

[71] *Collier* v. *Steinhart*, 51 Cal. 116; *Trewaltha* v. *Buchanan G. M. & M. Co.*, 96 Cal. 494.

[72] *Mann* v. *O'Sullivan*, 126 Cal. 61.

[73] *Fisk* v. *Cen. Pac. R. R. Co.*, 72 Cal. 38.

[74] *Livingston* v. *Kodiak P. Co.*, 103 Cal. 258.

DECISIONS WHERE KNOWLEDGE OF THE DANGER PREVENTED RECOVERY OF DAMAGES.

Another ground on which the courts have frequently refused to permit the recovery of damages is found in the ruling that, where the servant knows the danger, and yet continues to incur the risk of accident, the master is not liable for injuries.[75] This is based on the code provision declaring that "an employer is not bound to indemnify his employee for losses suffered by the latter in consequences of the ordinary risks of the business."[76]

In cases where the danger is not necessarily incident to the business, but due to defects in the appliances or other conditions that could have been remedied by the employer, the California courts have shown a growing reluctance to enforce this rule that knowledge of danger debars from recovery. In a number of recent decisions, the Supreme Court has held that the injured workman can recover damages, if he was not fully aware of the personal risks that he ran.[77]

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[75] "Where a party works with, or in the vicinity of a piece of machinery insufficient for the purposes for which it is employed, or for any reason unsafe, with a knowledge or means of knowledge of its condition, he takes the risk incident to the employment in which he is thus engaged, and cannot maintain an action for injuries sustained." (*McGlynn* v. *Brodie*, 31 Cal. 379.)

An employee accepting employment, knowing of certain defects in the machinery, knowing the extent of danger therefrom, and knowing that the complement of men to perform the work was insufficient, and of the danger therefrom, accepts the risks of such employment, and cannot recover for injuries occurring thereby. (*Long* v. *Coronado R. Co.*, 96 Cal. 273.)

Limberg v. *Glenwood L. Co.*, 127 Cal. 603. *Murdock* v. *Oakland R. L. & H. E. R. Co.*, 128 Cal. 27.

[76] *Civil Code*, Sec. 1970.

[77] Thus in 1880 it was held in the case of an engineer whose death was due to the failure of the railroad company to fence its tracks, that his knowledge of the danger prevented recovery. (*Sweeney* v. *Central Pac. R. R. Co.*, 57 Cal. 18.) Nine years later this decision was overruled in a similar case. (*Magee* v. *N. Pac. Co.*, 78 Cal. 437.)

"To defeat the servant's right of recovery he must not only be aware of the defect in the appliance, but know and appreciate the risks and dangers resulting or likely to follow from such defects; although he is in no better position if he is ignorant of the defects and the risks and dangers by reason of his failure to exercise ordinary common sense and prudence in the examination of the instruments and appliances placed in his hands with which to labor." (*Alexander* v. *Cent. L. & M. Co.*, 104 Cal. 539.)

The only exception to the rule that the servant, when aware of the danger he runs in using defective appliance, takes the risk thereof, is

Even when the employee is fully aware of all the risks incurred by continuing work under unsafe conditions, he is not always obliged to leave his place immediately on discovery of such dangers. He must notify his employer of the defects, and on receiving assurance that the matter will be remedied, may wait a reasonable time for the fulfillment of such promises, without forfeiting his right to recover damages for injuries.[79] It is important that the servant give this notice of all defects which he may discover in the appliances, for if the employer is not aware of the unsafe conditions, and could not have learned

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where he was not awkre of the danger incident to the defect. (*Limberg* v. *Glenwood L. Co.*, 127 Cal. 600.)

"It has been often said that the master is not liable for defects in such things to a servant whose means of knowledge thereof were equal to those of the master. But this is an erroneous statement. The master has no right to assume that the servant will use such means of knowledge, because it is not part of the duty of the servant to inquire into the sufficiency of these things. The servant has a right to rely on the master's inquiry, because it is the master's duty so to inquire; and the servant may justly assume that all these things are fit and suitable for the use which he is directed to make of them. The true definition is, that when circumstances make it the duty of the servant to inquire, it is contributory negligénce on his part not to inquire. A servant is chargeable with actual notice as to matters concerning which it was his duty to inquire. (Shearman and Redfield on Negligence, Sec. 287, cited in *Magee* v. *N. P. C. R. R. Co.*, 78 Cal. 437.)

"And when it is claimed that the injured employee was himself guilty of such negligence as to bar him from recovering damages for his injuries, it must appear that he not only knew, or had the means of knowledge, of the unsafeness of the place, appliance, or machinery, but also that he knew, or ought to have known, of the danger to which he was himself personally exposed." (*Mullen* v. *Cal. Horseshoe Co.*, 105 Cal. 83. See also *Mansfield* v. *Eagle Box Co.*, 136 Cal. 625; *Lee* v. *S. P. R. R. Co.*, 101 Cal. 122; *Ingerman* v. *Moore*, 90 Cal. 410; *Ryan* v. *Los Angeles etc. Co.*, 112 Cal. 244; *Verdelli* v. *Gray's Harbor etc. Co.*, 115 Cal. 517.)

[79] Where the employee upon discovery of defect in appliance or place of work at once makes complaint to his employer, and has been promised that it should be remedied, he will be justified in continuing work for a reasonable time in the expectation that the promise will be kept. (*Murdock* v. *Oakland, S. L. & H. E. R. Co.*, 128 Cal. 26.) If the exercise of ordinary prudence demands that the employee stop work at once upon discovering defect or danger in apparatus or place of work, he must stop, but if otherwise, he should make complaint to the master of defect, and for a reasonable time thereafter cannot be held as matter of law, to have assumed risk. (*Ibid.*, p. 27.)

Mere continuance of the servant in his work in the face of known danger only raises a question for the jury (as to whether he was guilty of contributory negligence in so doing). *Magee* v. *North Pac. C. R. Co.*, 78 Cal. 436.

Where a servant makes complaint to his master of defect in appliances and the master remains silent, and the servant continues to use the defective appliances beyond a reasonable time thereafter, he assumes the risks incident to the defects. (*Limberg* v. *Glenwood L. Co.*, 127 Cal. 601.)

of them by the exercise of ordinary care, then he is not liable for any injury that may result.[79]

DAMAGES ALLOWED FOR INJURIES OR DEATH.

The first California law providing for the payment of damages for death or injury due to negligence was passed in 1862, and was intended chiefly for the protection of pedestrians from defective sidewalks or wharves.[80] This act was embodied in the Code of Civil Procedure of 1872.[81] Two years later the law was made more general in its application by striking out the specific references to sidewalks. It was also brought into closer conformity to the law in other parts of the country by the omission of the part allowing the jury to fix exemplary damages, or damages that would serve as a warning or punishment, in addition to those covering the pecuniary loss of the plaintiff.[82]

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[79] There have been several cases where judgment has been given for the defendant on the ground that the plaintiff had the better opportunity to learn of the danger. (*McGlynn* v. *Brodie*, 31 Cal. 382, 385. *Thompson* v. *Cal. Const. Co.*, 148 Cal. 35.)

''The master is not liable for dangers existing in the place where the servant is assigned to work, unless the master knows of the dangers or defects, or might have known thereof if he used ordinary care or skill to ascertain them. This rule applies with greater force in cases where the conditions surrounding the place of work are constantly changing, owing to the progress of the work. The rule is further modified by the proposition that where the servant is under the same obligation as the master is to look for dangers in the place of work, and has equal facilities for ascertaining them, and under these conditions continues the work, the master is not liable for any injury caused by the dangers thus existing, unless in some manner he urges or coerces the servant to continue the work after he himself is aware, or should have been aware, of the danger.'' (*Thompson* v. *Cal. Cons. Co.*, 148 Cal. 39-40.)

[80] *Statutes of 1862*, p. 447-8.

[81] ''When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death; or when the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square, or wharf, his heirs or personal representatives may maintain an action for damages against the person whose duty it was, at the time of the injury, to have kept in repair such sidewalk or other place. In every such action the jury may give such damages, pecuniary or exemplary, as under all the circumstances of the case, may to them seem just.'' (C. C. P. (1872), 377.)

[82] The amended section which has been the law since 1874 reads: ''When the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this

In estimating damages for injuries, the judges and juries must consider the costs of medical attendance, and the pecuniary loss due to temporary inability to work, or to permanent incapacity or lessening of earning power, and also the physical and mental suffering of the plaintiff.[83]

When damages are sought for the death of a relative, these last factors do not enter into the estimate of the amount to be awarded, as the injury to be measured is not that sustained by the deceased person, but by the surviving heirs.[84] While in such cases the law does not allow damages for mental suffering, the Supreme Court has sustained instructions to the jury which permitted a consideration of harmonious personal relations in estimating pecuniary damages claimed by a widow for the loss of her husband.[85]

The amounts awarded by California juries in employer's liability cases have varied from a few hundred dollars for slight injuries, to twenty-five thousand dollars for permanent maiming or death.

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and the preceding section, such damages may be given as under all the circumstances of the case may be just.'' (*Amdts. to Codes*, 1873-4, p. 294.)

The damages for injuries not resulting in death are allowed in sections 1969 and 1971 of the Civil Code. The latter section reads as follows: ''An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.''

[83] ''The jury should have been told that in estimating the damages they might consider what, before the injury complained of, was the health and physical ability of the plaintiff to maintain himself and family, if he had one, as compared with his condition in these particulars afterwards; his loss of time, and how far the injury was permanent in its character and results, as well as the physical and mental suffering he had sustained by reason of the injury, and that they should allow such sum for damages as in their opinion would fairly and justly compensate him for all the loss and injury sustained.'' (*Malone v. Hawley*, 46 Cal. 415.)

[84] Pecuniary damages are limited to the probable value of the life of the deceased to relatives. (*Morgan v. S. P. R. Co.* 95 Cal. 510.)

[85] ''We are of opinion that the Court erred in including in the instructions the words 'sorrow, grief, and mental suffering occasioned by the death of the son to his mother.' . . . The damage should be confined to the pecuniary loss suffered by the mother and the loss of the comfort, society, support, and protection of deceased.'' (*Munro v. P. C. Dredging & R. Co.*, 84 Cal. 527.)

''If husband and wife had lived together, in concord, each rendering kindly offices to the other, such facts might be taken into consideration; not, as the books say, for the purpose of affording solace in money, but for the purpose of estimating pecuniary losses.'' (*Beeson v. Green Mt. G. M. Co.*, 57 Cal. 20.)

AMENDMENTS TO THE EMPLOYER'S LIABILITY LAWS, 1903, 1907.

In our study of the supreme court decisions we have indicated the chief defects of the early laws defining the responsibility of the employer for the safety of those engaged in his service; we have also shown the growing disposition, in recent cases, to interpret more and more strictly the legal obligations of the employer. The amendments to the employer's liability laws made in 1903 and 1907 first gave statutory sanction to these recent Supreme Court rulings, and then took a definite step in advance by defining and extending the application of the doctrine of vice-principal, and by limiting the number of persons who could be included in the exemptions under the fellow-servant rulings.

As in the case of other important labor legislation, the employers' liability bills originated in the San Francisco Labor Council, and were endorsed by the State Federation of Labor. The 1903 bill proposed to add a clause to Sec. 1970 of the Civil Code, so that it would read: "The employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, *unless in the course of the employer's business such other person has the power of ordering or directing said injured employee in the performance of his work,*[58] or unless the employer has neglected to use ordinary care in the selection of the culpable employee."

This first attempt to modify the employers' liability laws of the state met with vigorous opposition. When the measure came up for consideration in the senate, an entire session was given to the spirited debate, during which a number of amendments were offered and rejected. The mining interests claimed to be most endangered by the proposed changes in the law, though it was declared that it was aimed chiefly at the railroad companies. One of the bitterest opponents of the bill asserted that its passage would put an end to the mining industry of the state.[87] The mine owners hastened to send in a petition which claimed that the passage of such a law would necessitate the closing down of many, if not all, low-grade mines. They pointed out that "Under the proposed laws, at different times in the active operation of mines, nearly every man employed about a mine would become a vice-principal and the company or owner thereof be liable for his acts."[88]

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[58] The amendment proposed is in italics.

An amended bill was finally passed which, in place of the substantial gains proposed in the original measure, merely gave statutory sanction to what had already been fully recognized in the Supreme Court decisions. The clause holding the employer liable for the negligence of all those who had the right to direct or command was stricken out, and a substitute inserted to the effect "unless the negligence causing the injury was committed in the performance of a duty the employer owes to the employee."[89]

In 1905 the Labor Council returned its original bill which amended Sec. 1970 of the Civil Code, making the employer liable for the negligence of a vice-principal, and also proposed the addition of two new sections to the code defining vice-principal and fellow-servant.[90] Owing to the delay of the man entrusted with the introduction of these measures, they died on the files.

These unsuccessful efforts to amend the employer's liability laws only called attention to the demand for legislation on this subject, and helped prepare the way for more radical changes than had been attempted in the first bill which met with such vigorous opposition. In 1907 bills intended for the limitation of the application of the fellow-servant rulings in cases where railroad employees were injured through the negligence of superior officers, or those in a different department of labor, and also the employer's liability and fellow-servant bills of more general application, were introduced.[91] The railroad employer's liability bill passed the assembly, and was held in abeyance awaiting the fate of a similar measure which had been introduced in the senate. This latter bill, which had been proposed by Senator Leavitt, was finally passed.[92]

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[87] *Sacramento Record-Union*, February 6, 1903.

[88] *Ibid.*, February 13, 1903.

[89] *Ibid.*, February 20, 1903; also *Labor Clarion*, March 27, 1903.

[90] Sec. 1972.—All persons engaged in the service of any person or firm, or any corporation, foreign or domestic, doing business in this State, who are entrusted by such person, firm, or corporation with the authority or superintendence, control, or command of other persons in the employ or service of such firm, or corporation, or with authority to direct any other employee, are vice-principals of such person, firm, or corporation, and are not fellow-servants with such employee.

Sec. 1937.—All persons who are engaged in the common service of any person, firm, or corporation, and who while so engaged, are working together to a common purpose of some grade neither of such persons being entrusted by said person, firm, or corporation, with any superintendence or control over their fellow-employees, are fellow-servants with each other; provided nothing herein contained shall be construed to make employees fellow-servants with other employees engaged in any other department or service of such person, firm, or corporation. Employees who do not come within the provisions of this section shall not be considered fellow-servants.

A part of the amendments of 1907 were like those of 1903 in that they merely embodied in the statutes principles already recognized in the Supreme Court rulings. In addition, two important new points were gained which had been refused in 1903 and 1905. The new law holds the employer responsible for the negligence of a co-employee who has the right to direct the person injured, and also refuses to permit the fellow-servant ruling to apply to those working in a different department, or on some other machine or appliance than that where the injured employee was working.[93]

It will be well by way of review to analyze our employers' liability law as it now stands, in order to discover the sources of its various clauses. The new provisions were all added to Sec. 1970 of the civil code, which was originally taken from the New York code, and enacted in the California Civil Code in 1872. This oldest part of the law reads: "An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business, in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, . . . unless he [the employer] has neglected to use ordinary care in the selection of the culpable employee." The omitted section is the amendment of 1903, which is as follows: "unless the negligence causing the injury was committed in the performance of a duty which the employer owes by law to the employee."

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[91] Assembly bill No. 60, introduced by Lemon. Senate bill No. 162, by Leavitt. Assembly bills Nos. 76 and 77, by Eshleman. Substitute bill No. 736, by Leavitt. For full history of bills, see *Senate and Assembly Journals.*

[92] Senate bill No. 736.

[93] *Statutes of California and Amendments,* 1907, pp. 119-120.

The real gains are contained in the proviso added in 1907: "Provided, nevertheless, that the employer shall be liable for such injury when the same results from the wrongful act, neglect, or default of any agent or officer of such employer, superior to the employee injured, or of a person employed by such employer having the right to control or direct the services of such employee injured, and also when such injury results from the wrongful act, neglect or default of a co-employee engaged in another department of labor from that of the employee injured, or employed upon a machine, railroad train, switch signal point, locomotive engine, or other appliance than that upon which the employee who is injured is employed, or who is charged with dispatching trains, or transmitting telegraphic or telephonic orders upon any railroad, or in the operation of any mine, factory, machine shop, or other establishment." It will be seen that by these additions the fellow-servant plea is limited in its application to cases where the negligence is that of a person of equal rank, and in immediate association with the injured workman.

In the next paragraph of the law we again recognize the court rulings. It provides, "Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways, appliances, or structures of such employer shall not be a bar to recovery for any injury or death caused thereby, unless it shall also appear that such employee fully understood, comprehended and appreciated the dangers incident to the use of such defective machinery, ways, appliances or structures, and thereafter consented to use the same, or continued in the use thereof."

This is followed by further amendments taken partly from the code of civil procedure,[94] and partly from decisions: "When death, whether instantaneous or otherwise, results from an injury to an employee received as aforesaid, the personal representative of such employee shall have a right of action therefor against such employer, and may recover damages in respect thereof, for and on behalf, and for the benefit of the widow, children, dependent parents, and dependent brothers and sisters, in order of precedence as herein stated, but no more than one action shall be brought for such recovery."

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[94] *Code of Civil Procedure*, Sec. 377; embodied in the C. C. P. of 1872, as a substitute for Act of 1862, p. 447.

The workman cannot contract to forego any of the advantages which this law allows him, as it contains a stipulation: "Any contract or agreement, express or implied, made by any such employee to waive the benefits of this section, or any part thereof, shall be null and void, and this section shall not be construed to deprive any such employee or his personal representative, of any right or remedy to which he is now entitled under the laws of this State. The rules and principles of law as to contributory negligence which apply to other cases shall apply to cases arising under this section, except in so far as the same are herein modified or changed."

These amendments have done away with the most unjust features of the old common-law rulings, but we still fall far short of the protection given by the industrial insurance laws of a number of the great nations of Europe. Moreover, such benefits as these California laws confer can be gained only by costly and lengthy litigation. That the employee is far less able than the employer to maintain an extended fight for his rights, is shown by the fact that seventy-five per cent. of the Supreme Court cases of this kind were appealed by the employer.

The costs of the law-suits contesting the rights of the employees to the payment of damages are so great that, with these recent enactments extending his liability, the California employer must soon be brought to a realization of the fact that it would be cheaper, as well as more humane, to insure his employees against all accidents, not due to gross negligence on the part of the injured person. Thus the amendments to the employers' liability laws are significant not merely because they give greater protection to the working people of the state, but also because they are paving the way for that completer insurance against industrial accidents that is now provided by the laws of the other great civilized nations.

CHAPTER X.

LAWS REGULATING THE LABOR OF CHILDREN.

There are but few states in the Union where the labor of children has been so little utilized as in California. Women and children did not come with the first great influx of population; and, in later years when the number of growing families multiplied, the Chinese monopolized the lighter tasks that usually fall to the boys and girls. From its inception the California labor movement has stood for the protection and education of the children of the wage-workers; and the trade-unions have exerted the greatest influence on public opinion in the sections of the state which have offered the greatest temptations for an early entry into the ranks of the wage-earners. The enforcement of this policy restricting child labor has also been promoted by the good economic conditions that have been characteristic of the state. It has rarely been necessary for young children to contribute to their own support, and ambitious parents have usually been able to give their children extended educational advantages.

LAWS FOR THE REGULATION OF APPRENTICESHIP.

With the conservatism that seems to be of common occurrence in such bodies, the early California legislators assumed that the personal tie of apprenticeship was the chief relationship of the youthful worker in need of regulation. The first apprentice law was passed in 1858,[1] though several bills dealing with the subject were presented to the legislature prior to this time.[2] During the sixties amendments were made to the apprentice law authorizing charitable societies and public officials to apprentice dependent children.[3] The main features of these early apprentice laws were embodied in the civil code of 1872.[4] Four years later the apprentice regulations were revised.[5] While the chief provisions of the law of 1858 were retained, several important new sections were added, and the Code Commissioners have recently embodied these in our present civil code.[6]

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[1] *Statutes of California*, 1858, p. 134.

[2] *Assembly Journal*, 1852, p. 55. *Ibid.*, 1857, p. 898.

[3] *Statutes of California*, 1860, p. 37; 1862, p. 515; 1863, p. 59; 1870, p. 334.

The only section of the law of 1858 which has found no counterpart in our present laws was the one which allowed any white person capable of becoming a citizen of the state to bind himself for one year in payment of the cost of his passage to California. This section was applicable only to minors, but permitted the year of service to extend beyond the minority of the person pledging himself to such a bargain. Such an indenture must be acknowledged before a magistrate in a private examination.[7] These provisions were contained in the civil code of 1872, but were dropped from the law of 1876.

The act of 1858 seems to contemplate a wider application of apprenticeship than the later laws. It permitted a minor to bind himself or herself during minority "to serve as clerk, apprentice, or servant, in any profession, trade or employment."[8] Subsequent legislation allowed apprenticeship "to any mechanical trade or art, or to the occupation of farming."[9] All the laws provide that the child shall be fourteen years old or over[10] before being apprenticed, and fix the termination of service at twenty-one for males and eighteen for females.

The apprenticeship laws assume that the minor is capable of making contracts. The earlier laws provide that "a minor may bind himself or herself during minority," with the consent of the parent or guardians; but the later enactments, with more regard for legal consistency, read, "A minor with his consent may be bound, etc." The minor must sign the indenture, or in some other way signify his consent to the agreement.[11] He is a party to the suit which the master may bring for the violation of the contract, and may be compelled to pay the costs of such a suit after he attains his majority.[12] The law also stipulates that money recovered as damages for the master's violation of the contract, and the clothing which the contract or the law requires the master to furnish, shall be delivered to the apprentice to be held by him as his sole property.[13]

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[4] *Civil Code*, 1872, Secs. 254-276.

[5] *Statutes of California*, 1875-6, p. 842.

[6] *Statutes of California and Amendments to the Codes*, 1905, p. 560. *Civil Code*, 264.

[7] *Statutes of California*, 1858, p. 135, Sec. 11.

[8] *Ibid.*, p. 134, Sec. 1. The disadvantages of a long apprenticeship to some of these occupations were soon recognized. The act of 1860 permitting the officers of orphan asylums to bind orphans and half-orphans added a proviso, "unless such binding be for the purpose of learning a mechanical trade, the term of service of males shall expire at the age of eighteen years." *Statutes of California*, 1860, p. 38.

[9] *Statutes of California*, 1875-6, p. 842. *Civil Code*, 1905, Sec. 264.

[10] Evidently this restriction did not apply to dependent children, for among the provisions of the act allowing the apprenticing of orphans was a clause stipulating that the consent of children under ten years of age might be assumed. (*Statutes of California*, 1867-1870, p. 334, Sec. 2.)

Of the persons authorized to bind or consent to the binding of apprentices, the father comes first. In case of his death or incompetency, or where he has wilfully abandoned his family for one year without making suitable provision for their support, or is habitually intemperate in the use of intoxicants,[14] or is a vagrant, the child may be bound by the mother or guardian. An executor, who, by the will of the father, is directed to bring up a child to a trade or calling, has power to bind by indenture in like manner as the father might have done. The mother alone has power to apprentice an illegitimate child. When a minor has no parent or guardian competent to act for him, he may, with the consent of the superior court, bind himself. In 1876 a clause was added to the law requiring the consent of the court in cases where a mother who has married after the birth of the child wishes to apprentice him.[15]

The early lawmakers regarded the apprentice system as a convenient means of caring for dependent children. In addition to the special acts permitting officers of charitable institutions to apprentice the children in their charge,[16] the supervisors of counties,[17] and the trustees of townships also received authority to bind dependent children. The later laws unify all this legislation by allowing the superior court to apprentice such children at the request of any citizen. Where minors are bound in this way, the law requires the master to give the child proper instruction, and, at the termination of the service, he must also pay him fifty dollars in gold, and give him two full suits of clothing worth not less than sixty dollars.[18]

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[11] *Statutes of California*, 1858, p. 134, Sec. 3; 1860, p. 37; 1875-6, p. 843; *Civil Code*, Sec. 266.

[12] *Civil Code*, Sec. 274.

[13] *Ibid.* Sec. 273.

[14] This clause for the transfer of the power to the mother was added in 1876. The incapacity of the father must be decided in the Superior Court by a jury, before the indenture can take effect. (*Civil Code*, Sec. 267.)

[15] *Civil Code*, Sec. 265.

[16] *Statutes of California*, 1860, p. 37; 1862, p. 515; 1863, 59; 1870, 334-5.

The indenture must be executed in duplicate, one copy for the use of the master and one for the minor. In cases requiring the approval of the courts, the latter copy must be deposited with the clerk of the court for safe keeping. The courts will not enforce, as against the apprentice, any indenture whose terms are less advantageous than those allowed by the law.[19]

The apprentice may be released from further service under the following conditions:

(1) In case of the death of the master;

(2) Or when he removes from the state.[20]

(3) The Superior Court may hear charges of violation of the contract of apprenticeship, or oppressive treatment, and, if they are well-founded, may discharge the apprentice from his obligations.[21]

(4) If the master gives up the trade to which the minor has

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[17] *Statutes of California*, 1858, p. 134, Sec. 4. *Civil Code*, Secs. 268, 269.

[18] "When the minor is poor, homeless, chargeable to the county or state, or an outcast who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority. Proceedings therefor may be instituted by any citizen, and no fee must be charged by any officer for any act in connection therewith. In all indentures by the court for binding out an orphan or homeless minor as an apprentice there must be inserted, among other things, a clause to the following effect: that the master to whom such minor is bound must cause him to be taught to read and write and the ground rules of arithmetic, ratio and proportion, and must give him the requisite instruction in the different branches of his trade or calling and, at the expiration of his term of service must give him or her fifty dollars in gold, and two new suits of clothes to be worth in the aggregate at least $60 gold." (*Statutes of California*, 1875-6, p. 843, Secs. 8, 9. *Statutes of California and Amendments to the Codes*, 1905, pp. 561-2, Sec. 268 of Civil Code.)

[19] "Every indenture entered into otherwise than as herein provided is, as against the apprentice, absolutely void." (*Civil Code*, 1905 amendment, Sec. 266.)

[20] This provision refusing to allow the minor to be removed from the state was added in 1876. (*Statutes of California*, p. 845, Sec. 20.)

[21] *Civil Code*, Sec. 271-2.

been bound, he may ask the court to discharge him from his obligations to the apprentice.[22]

The interests of the master are also protected by law. If the apprentice is guilty of gross misbehavior, or neglect of his duty, the master may bring complaint in the superior court to annul the contract.[23] The costs of such a suit must be paid by the parents or guardian of the minor, or by the apprentice after he attains his majority. The master may also recover a fine of not more than $100 from any one who is guilty of enticing or persuading the apprentice to run away, or who harbors or conceals him, knowing him to be a runaway.[24]

Very little use appears to have been made of the state laws for the regulation of apprenticeship. Apparently the early labor organizations were not even aware of the existence of a law permitting the binding of the minor for a definite period. In 1867, at a meeting of the Industrial League, we find the members complaining of the lack of an apprentice law.[25] The carpenters discussed the subject in 1870, and, after denying any restrictive rules in their organization, declared that the boys would stay with their masters only one or two years; then, when they were just beginning to be of some assistance, they became impatient of control and left.[26]

That some of the trade-unions adopted rules restricting the number of apprentices at an early date is evident from the frequent newspaper criticism of the results of such a policy.[27] Such rules must, at first, have been adopted more because they were accepted traditions of the organization brought from older communities, than because there was any immediate danger of overcrowding in the various trades. In the trade-unions the necessary training is generally secured by the enforcement of the requirement of a certain number of years of experience before admission to the rank of a journeyman, and to membership in the union, rather than by indentures binding the apprentice to a particular master. Thus minors are allowed the same freedom of contract claimed by the mature workman.

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[22] *Civil Code*, Sec. 276.

[23] *Ibid.*, Sec. 274.

[24] *Ibid.*, Sec. 275.

[25] "We should also have a law to regulate the apprenticing of our young men. At present the law scarcely provides for such an emergency. . . . There are over two thousand young boys running at large in this city and county, who otherwise would be employed, if there were proper laws in existence to regulate the apprentice system." *Alta*, June 2, 1867.

[26] *Bulletin*, January 15, 1870.

[27] The carpenters who asserted in 1873 that their roll had contained 3,000 names, declared that they had never made a rule restricting the number of apprentices, but the other building trades and the iron trades seem to have had such regulations. *Bulletin*, January 13, 15, 1870; October 3, 1871; January 15, 22, 1873.

As the trade-unions gained in strength, there were frequent disputes over this question of their right to restrict the number of apprentices.[28] The Labor Commissioner undertook an investigation of the subject in 1888. He found that fourteen of the forty-eight organizations examined had passed rules regulating apprenticeship and restricting the number allowed.[29] While the evils due to the crowding out of the mature workers by the cheap boy and girl help are fully recognized, the Commissioner deplores the fact that American boys are being deprived of the opportunity to learn good trades, and gives statistics showing that, of the artisans registered as voters in San Francisco, over forty-seven per cent. were foreign-born.[30]

Both in his chapter on the decay of apprenticeship[31] and in the report of his investigation of the printers of San Francisco and Oakland,[32] Commissioner Tobin points out the need of apprentice laws that shall compel the minor to stay with his trade until it is thoroughly learned, and also oblige the master to give more attention to the systematic instruction, rather than mere exploitation of the young people in his employ.

The printers were particularly concerned about this tendency to substitute minors for adult workers, and to confine the instruction of the young people to a limited field where their services would yield the greatest profits. Abuses of this kind gave rise to several strikes and vigorously conducted boycotts, which prompted the special investigation of the Labor Commissioner, and also led the printers to take the initiative in the efforts to pass a stronger apprentice law.[33]

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[28] "We have in our times trades assemblies and unions, the members of which are striving to obtain control over the number of apprentices to be admitted to learn the trades in various workshops. This has been and will continue to be a fruitful source of difference between employers and employees, and has led to strikes more than once." (*First Biennial Report of the Bureau of Labor Statistics* (1883-4), p. 13.)

[29] The trades having such regulations were: bricklayers, bag and satchel makers, calkers, cigar-makers, cigar-packers, coopers, glass blowers, hatters, iron molders, pattern makers, stone cutters, tailors, printers, and wood carvers. *Third Biennial Report, Bureau of Labor Statistics*, pp. 216-218.

[30] Native-born artisans, 6,644; foreign-born, 5,960. (*Ibid.*, p. 211.)

[31] *Ibid.*, pp. 193 ff.

[32] *Ibid.*, pp. 349-353.

The proposed law, which had the support of the Labor Commissioner and was endorsed by the Federated Trades Council, undertook to provide heavier penalties for the failure to fulfill the obligations of both apprentice and master. The minor was to serve at his trade for not less than three or more than five years. If he left his employer without good and sufficient cause, he could be arrested and punished by a fine of not less than three hundred dollars, and by the forfeiture of back pay and all other claims against his master. If the employer failed to discharge his agreement "to teach, or cause to be carefully and skillfully taught to his or their apprentice, every branch of his or their business to which said apprentice may be indentured,"[34] he became subject to the penalties of the act.[35] As the Legislature failed to pass the bill, this measure is interesting chiefly as an indication of what the labor organizations wanted.

Not only the trade-unions, but also the employers have attempted to frame apprentice regulations which would meet their needs more fully than those of the statutes. Some of these contracts have been quite unfair to the apprentices, as they permitted a discharge with forfeiture of back pay or other bonus whenever the master saw fit, and there were no guarantees of proper instruction. Among some of the provisions quoted from these agreements by the Labor Commissioner were the following: "I am to make myself useful in any department whenever and wherever directed, etc." "I am to be discharged by said —— —— whenever in their judgment they deem me incapable of performing the work as they desire."[36] A firm employing fifteen to twenty apprentices required them to sign a contract agreeing to work for a term of years, and allowing the withholding of ten per cent. of the wages to insure the fulfillment of this agreement. At the same time the master claimed the right to break the contract and confiscate the sum reserved from the wages, if the apprentice failed, neglected, or refused to conform to the rules and regulations, or to perform diligently all lawful work required of him.[37]

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[33] *Union Printer*, November, 1888; February, 1889; March, 1889.

[34] The bill is published in the *Coast Seamen's Journal* of January 30, 1889.

[35] A fine not exceeding $500 or less than $100, to be paid to the apprentice.

[36] *Third Biennial Report, Bureau of Labor Statistics* (1887-1888), p. 197-8.

The Labor Commissioner gave the apprentice regulations of the Union Iron Works as typical of the better class of agreements. The fact that hundreds of San Francisco mechanics have learned their trades under such contracts gives its terms particular interest.[38]

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[37] "The said parties of the second part hereby agree to instruct the party of the third part in the business of ———, through their employees and not individually or personally; and reserve the right to discharge said ——— from their employment, under this indenture, and avoid this instrument at any time during said term, on account of any of the causes hereinafter specified; in which case the sum reserved from said wages, as hereinafter specified, shall be forfeited. . . .

"It is further stipulated and agreed, that the wages as hereinbefore expressed are so fixed upon the express condition and consideration that the said ——— shall remain and continue in said service and employment for and during the term of ——— years next ensuing from the date hereof; . . . and it is stipulated and agreed that said party of the second part shall reserve and keep back from and out of the monthly wages to be paid, . . . the sum of ten per cent. thereof." *Ibid.*, p. 198.

[38] "Boys will be received either as ordinary apprentices to serve four years in one department, or as engineer apprentices, to serve six years—two years on machines, one year in the pattern shop, one year erecting, and two years in the drafting room.

Ordinary apprentices will be received in the following departments: As machinists, including erecting; as pattern makers; as blacksmiths; as molders; and as boiler and plate workers.

No boy will be received under sixteen years or over eighteen years in the machine, pattern maker, blacksmith, or molder departments; nor under fifteen or over seventeen years of age in the boiler and plate works, including shipwork.

Boys in all departments will be taken on thirty days' trial, in order to satisfy themselves that they have made a proper choice, after which they will be required to register themselves as regular apprentices, by their parents or guardians in their behalf, and by themselves in their own behalf, all of which signatures will be considered as evidence that all the conditions herein named are understood and accepted by all parties interested.

For machinist and pattern maker apprentices the parent or guardian will be required to deposit $50 with the company, as a guarantee of good behavior by the boy. The company will also deposit $50 to the credit of the boy, said $100 to be given to the boy on the completion of his apprenticeship.

For molders, blacksmiths, and plate workers, the company will make

LAWS REGULATING THE CONDITIONS UNDER WHICH MINORS MAY BE EMPLOYED.

Notwithstanding the repeated efforts to secure adequate apprentice laws, this relationship has not been the typical or extensively accepted method by which the young people of California have entered upon their industrial careers. The census of 1870 shows 2,214 young people between 10 and 15 years of age engaged in gainful occupations in California; of this number only 393 were apprenticed. It is evident from the reports of the Labor Commissioner, and comments in the labor papers, that the apprenticing of minors with the full acceptation of the relationship has not been extensively practiced since that date. Like the older workers, the child has freely contracted with one employer or another, and accepted such terms as the conditions of the labor market made possible.

If "collective bargaining" is necessary to enable the adult worker to sell his labor advantageously, some means of protecting the children from the cupidity of their employers is even more indispensable. It is greatly to the credit of the tradeunionists that the needs of the children have never been forgotten. Demands for the thorough education and protection of the young have always received particular emphasis in the platforms and declarations of principles of the California labor movement.

The eight-hour movement was the first organized effort to secure better conditions of labor through legislation. It culminated in the law of 1868, which placed the first limitation on

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the deposit of $50 to the credit of the boy, to be paid to him on the completion of his apprenticeship.

Ordinary apprentices' wages shall be: First year, $4 per week; second year, $5 per week; third year, $6 per week; fourth year, $8 per week; three hundred full days must be worked to complete any one year.

Engineer apprentices will be received between the ages of fifteen and seventeen years, for a term of six years as already set forth. The parent or guardian will be required to deposit $100 as a guarantee of good faith. The company will also deposit $100 to the credit of said boy. Said $200 to be paid to the boy on the completion of his apprenticeship.

Engineer apprentices' wages shall be: First year, $4 per week; second year, $5 per week; third year, $6 per week; fourth year, $7 per week; fifth year, $8 per week; sixth year, $9 per week; three hundred full days must be worked to complete any one year." (*Third Biennial Report, Bureau of Labor Statistics* (1887-1888), p. 198.)

the length of the working-day of the children of the state. Though often forgotten and never enforced, this law has remained on the statute books ever since. The provision of the section applying to minors reads: "Any person or persons having in his, her or their employ, or under their control, any minor, either as wards or apprentices, who shall require of them more than eight hours' labor in any one day, shall be deemed guilty of a misdemeanor, and punishable by a fine of not less than ten or more than one hundred dollars, or by imprisonment not less than ten or more than twenty days."[39] There was no part of the eight-hour law whose passage was so vigorously contested as this. The vote in the senate on the motion to strike out this section stood 15 to 15, and it was retained only by the deciding vote of the presiding officer.[40]

The force of this law was greatly lessened by the construction which even its supporters allowed it to receive. It appears clearly to prohibit the employment of the minors to whom it applies for more than eight hours in one day. But a preceding section had stipulated that eight hours should be a legal day's work unless the parties concerned agreed on some other time. We are surprised to find the very person who did most to secure the passage of the law conceding that the child might also agree to forego the protection which the measure appeared to give him.[41]

This provision limiting the hours of labor of minors was embodied in the penal code of 1872, where it has remained ever since.[42] It is hard to understand why the law has been so completely ignored. Apprentices have been required to work as long or even longer than the adults in the same trades. Commissioner Stafford reported in 1906 that of all the requirements of the present child-labor law, the nine-hour day was the most difficult of enforcement.

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[39] *Statutes of California*, 1868, p. 63, Sec. 3. *Alta*, January 23, 1868.

[40] *Sacramento Daily Union*, February 14, 1868.

[41] The original eight-hour bill was prepared by A. M. Kenaday, a printer. The apprentice regulations were important in his trade. The carpenters who led in the eight-hour movement of 1867-8 seem to have been less strict in their regulations.

The *Alta* of April 22, 1868, publishes a card from A. M. Winn, the President of the Mechanics' State Council from which we quote: "Parents and masters may require their children and apprentices to labor eight hours for a day's work and no more, but they have a right to 'stipulate between the parties concerned' that they shall work more time for a day's work. That is, the boy may consent, but cannot 'be required' or, what is the same, forced to work more than eight hours for a day's work. The law was intended to protect children against the tyranny of thoughtless and cruel masters some of whom are known to work their boys as much as fourteen hours in the twenty-four." Of course, when so constructed, the law at once lost its force.

[42] *Penal Code*, Sec. 651.

No further attempts were made to regulate the employment of minors until 1889. The apprentice rules of the trade-unions were then under discussion, and particular attention had been attracted to the conditions of employment of minors by the printers' controversies over the number of children at work in certain shops, and by the discussion of the investigation made by the Labor Commissioner. At the meeting of the legislature following this agitation of the subject, the Federated Trades Council presented, in addition to the apprentice law already noticed, a bill regulating the employment of children and females.[43]

This bill was finally passed, though in an amended and weakened form. The proposed age limit at which children might be employed was changed from thirteen to ten years.[44] Even this tender age did not satisfy all the members, as one senator who voted against the bill explained that he did so because "many boys under the age specified in the act are compelled to work." The law required the registration of all minors under sixteen, and stipulated that a certificate duly verified by the parents or guardian should be kept on file, though it did not specify the nature of this certificate. It also provided that a printed notice stating the hours of labor expected of each person, and the names and ages of minors under sixteen, must be kept posted in the work rooms. The failure to comply with the law was punishable by a fine of from $50 to $200 for each and every offense. The Labor Commissioner was charged with the duty of enforcing the law.[45]

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[43] The original bill is given in the Minutes of the Federated Trades Council published in the *Coast Seamen's Journal* of December 12, 1888. It required that the maximum time for females under eighteen and males under sixteen be fifty hours per week. This was changed to apply to all minors under eighteen. The original bill also prohibited the employment of illiterate children under sixteen years of age.

[44] *Senate Journal*, 28th Session, pp. 121-2.

[45] *Statutes of California*, 1889, p. 4.

We have been unable to find any evidence of an attempt to put this law into operation. Three years later a member of the Retail Clerks' Association denounced the employment of boys under twelve years of age in the drygoods stores of San Francisco. He declared that the children worked from eight to six every day, and until ten on Saturday, and that they were frequently dragged from under the counters where they had fallen asleep from sheer exhaustion.[46]

The Labor Commissioner in his Report for 1901-02 says of this measure: "This law was in existence in this State for something like ten years, during which it is not of record that it received any particular attention from any source; in fact, when recently, in the City and County of San Francisco, the law in its amended form was brought to the attention of the employers, fully ninety per cent. of them declared that they had never heard of it and were not aware that such a law was in existence."[47]

A bill amending the child-labor law was presented by the State Federation of Labor in 1901. The age limit was raised from ten to twelve years, and the nine was substituted for the ten-hour day. An additional penalty of imprisonment for not more than sixty days was also added.[48] This act passed both branches of the Legislature by a unanimous vote,[49] and received the Governor's approval.

For the first time in the history of the state a serious effort was made to enforce the law. The limited number of assistants of the Labor Commissioner compelled him to confine his efforts to San Francisco. He reported that during the eleven months' canvass 6,479 establishments were visited. In these were employed 3,633 minors under eighteen years of age. Of this number, 1,495 were working in violation of the law; 26 being under twelve years of age, and 1,495 were working more than nine hours a day or 54 hours in one week.[50] Notices were sent to firms violating the law, and, with a few exceptions, the proprietors of the delinquent establishments modified their regulations so that they would conform to the law.[31]

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[46] *Pacific Union Printer*, July, 1892, p. 2.

[47] *Tenth Biennial Report, Bureau of Labor Statistics*, p. 40.

[48] *Statutes of California*, 1901, p. 631. As originally drafted for the Labor Council, the age limit of employment was placed at fourteen years.

[49] *Senate Journal*, Sess., p. 829. *Assembly Journal*, p. 1121.

[50] *Tenth Biennial Report, Bureau of Labor Statistics*, pp. 42-3.

In 1903 an effort was made to raise the age limit of employment from twelve to fourteen years, and to add more definite requirements about the age and schooling certificate.[32] The bill was again presented as a measure of the San Francisco Labor Council, though the San Francisco Settlement Association and other civic societies joined in the efforts to secure its passage. The San Francisco fruit canners stirred up a vigorous opposition to the proposed amendments. From early days the canneries have employed large numbers of minors;[33] or rather, in most cases, the children are permitted to assist adult workers, who are paid on a piece-work basis. Formerly many young children were kept out of school for a month or six weeks during August and September to engage in this work under conditions that were quite demoralizing. Some of the large canners feared that the withdrawal of these children would lessen their profits, hence their opposition to any further legislation on the subject.

An attempt was made to arouse the residents of the fruit districts to assist in the defeat of the bill. Hundreds of postals which grossly misrepresented its terms were sent to the rural communities. It is often impossible to enlist a sufficient labor force to save the fruit crop, so that these districts would be unwilling to dispense with the help of the children. The outdoor work with the members of the family and neighbors is not likely to prove injurious. The trustees, who fix the school terms, generally exercise their power to declare vacations at the times when the assistance of the young people is necessary. The section of the bill which provided that it should not be construed to prevent the employment of minors at domestic, agricultural, or horticultural work during the time the public schools were not in session, or during other than school hours, amply protected the fruit industries. But many persons to whom the alarming postals were sent did not investigate the truth of the assertion that the passage of the bill would deprive them of the assistance of their children in saving the crops, and complied with the request to sign the postals and mail them to their representatives in the Legislature. Hundreds of these ready-made protests were received by the members of the legislature, though an occasional more intelligent constituent reversed the terms of the printed opinion dictated from San Francisco, and returned an endorsement of the bill.

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[31] *Tenth Biennial Report, Bureau of Labor Statistics*, pp. 44-5.

[32] *Labor Clarion*, January 23, 1903, p. 12.

[33] *Fourth Biennial Report, Bureau of Labor Statistics* (1889-1890), gives a table of the number of employees in California canneries showing the large percentage of children.

The merits of the measure were fully argued in separate and joint meetings of the senate and assembly committees,[54] and the bill was finally returned to both branches of the legislature with recommendations that it pass. But the contest was vigorously renewed on the floor of the legislature, and its enemies succeeded in defeating it in the senate, and so weakening it by amendments in the assembly[55] that its friends finally withdrew it, rather than forfeit advantages already granted in the earlier law.[56]

During the next two years the settlement workers interested in securing better protection for the children tried to reach the evil in an indirect way by helping in the enforcement of the compulsory education law.[57] By serving for a month as special agent of the State Labor Bureau, the head worker of the settlement was able to gather authoritative information about the conditions under which the children in San Francisco and Oakland were working.[58] When the next session of the legislature convened, the settlement workers were prepared to make a determined effort to bring California up to the standard of more progressive communities in the matter of the protection of the children.

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[54] The writer was, at this time, head worker of the San Francisco Settlement Association. The account of the efforts to pass the child-labor law are matters of personal experience, as she presented the subject in the committees of the legislature, and assisted in lobbying for the bill at both the 1903 and the 1905 sessions of the legislature.

[55] *Senate Journal*, 35th Session, pp. 150, 827.

[56] *Assembly Journal*, 35th Session, pp. 113, 1285.

[57] They made an exhaustive investigation of school attendance in the district in which the settlement was located. The results were published in the *Western Journal of Education*, October, 1904, p. 717.

[58] For the report of this work, see the article on Women and Children Wage Workers, in *Eleventh Biennial Report, Bureau of Labor Statistics*, pp. 11 ff.

As a result of the experiences of 1903, and after discussing the terms of the new bill with representatives of prominent civic societies, two concessions were agreed upon in drafting the bill to be presented in 1905. These provisions have been severely criticized by eastern promoters of such legislation, and it is hoped that some explanation of the reasons for accepting them may lead to a better understanding of California conditions.

First, it was agreed that children over twelve years of age might work in the school vacation, if they had a certificate showing that they had attended school during the previous term.[59] As yet the children of California are not extensively employed in manufacturing or other confining occupations except in San Francisco, Oakland, and Los Angeles. In these places the summer vacation of the schools usually lasts but six weeks to two months. The permission to do summer work helped allay the fears of the fruit canners. In older communities, where the demand for the labor of children is greater, this concession might obstruct the enforcement of the law, but in California, where but few children are employed and the conditions of work are rarely severe, it would be hard to convince the public that there is any valid reason for refusing them this opportunity to earn a little extra money.

The second of these concessions permits a child over twelve years of age to work temporarily when, owing to the illness of his parent or parents, his assistance becomes necessary for the support of the family. The permit to work under such circumstances must be granted by the judge of a juvenile court, or, where there is no juvenile court, a judge of the superior court. The law also requires that such cases be investigated by a probation or truant officer, or such other person as the judge may designate, and that the certificate specify the kind of work and length of time for which it is issued.[60] It was felt that, in the absence of any public fund pensioning children in such cases, this temporary assumption of the burden of assisting in the support of the family was a lesser evil than the breaking up of the family, or even a resort to charitable agencies for assistance. The same right to begin work two years earlier is not granted to orphans, because with them it would mean a permanent retirement from school. Those interested in securing a stronger child-labor law were willing to make these concessions because they knew that they would be inviting another defeat, or insuring a lax enforcement of the law, if they insisted upon conditions that, under existing circumstances, would not receive the support of the best public opinion of the state.

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[59] *Statutes of California*, etc., 1905, p. 12, Sec. 2.

[60] This section reads: "Provided that the judge of the juvenile court of the county, or city and county, or in any county or city and county in

While in these two classes of cases the 1905 law permitted children to work at as early an age as the law of 1901, in other respects it is a substantial improvement. Not only is the age limit raised from twelve to fourteen years, but also the application of the restriction is greatly extended. The 1901 statute provided that "No child under twelve years of age shall be employed in any factory, workshop, or mercantile establishment";[61] while the law of 1905 reads, "No child under fourteen shall be employed in any mercantile institution, office, laundry, manufacturing establishment, workshop, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages."[62] Among the other new features are the prohi-

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which there is no juvenile court, then any judge of the superior court of the county or city and county in which such child resides, shall have authority to issue a permit to work to any such child over the age of twelve years, upon a sworn statement being made to him by the parent of such child that such child is past the age of twelve years, that the parents or parent of such child are incapacitated for labor, through illness, and after investigation by a probation officer or truant officer of the city, or city and county, in which such child resides, or in cities and counties where there are no probation or truant officers, then by such other competent person as the judge may designate for this purpose. The permit so issued shall specify the kind of labor and the time for which it is issued, and shall in no case be issued for a longer period than shall seem necessary to the judge issuing such permit. Such permit shall be kept on file by the person, firm, or corporation employing the child therein designated, during the term of said employment, and shall be given up to such child upon his quitting such employment. Such certificate shall be open to the inspection of the truant and probation officers, etc." (*Statutes of California and Amendments to the Codes*, 1905, p. 12.)

[61] *Statutes of California and Amendments to the Codes*, 1901, p. 631, Sec. 2.

[62] *Ibid.*, 1905, p. 11, Sec. 2.

bition of night work[63] for children under sixteen; the requirement of an educational test or night-school work for all under this age, and also a number of provisions intended to insure a stricter enforcement of the law.[64]

A systematic effort was made to secure an extensive endorsement of the law before it was presented to the legislature. The State Federation of Labor and the San Francisco Labor Council heartily supported the bill, and the papers of these organizations, and also of the Building Trades Councils, gave it extensive notice. The settlement workers were able to obtain the endorsement of the San Francisco Merchants' Association, and of the Los Angeles and Santa Barbara chambers of commerce. They prepared attractive material, and by personal interviews with the editors obtained editorials in the chief San Francisco newspapers. Governor Pardee was also interviewed and his consent given to quote him as being "heartily in sympathy with such legislation." Civic societies and individuals were requested to write letters to members of the legislature asking them to assist in the passage of the act. Copies of the bill and literature furnishing information about similar legislation in other sections of the country, and arguments in support of the measure, were sent to nearly every paper in the state. Many papers complied with the request to print the bill and write editorials in its support.[65]

Nor were the efforts relaxed after the introduction of the bill. Every member of the legislature was interviewed by workers from the Settlement Association, and a careful record prepared of how each would vote on the measure. As many members were away at different times visiting the state institutions, or on other business, it was necessary to watch carefully in order to prevent the act coming to a vote when its friends were absent. As all opposition to the bill had been thus carefully forestalled, its final passage was assured.

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[63] *Statutes of California*, etc., 1905, p. 11, Sec. 2.

[64] *Ibid.*, Sec. 3.

[65] Much of the credit for the passage of the present California child-labor law is due to Mr. J. P. Chamberlain, a San Francisco lawyer and settlement worker. He assisted in drafting the bill, attended to securing the endorsement of the San Francisco Merchants' Association, and the Santa Barbara and Los Angeles chambers of commerce. He also made an able argument for the measure before the joint senate and assembly committee, and interviewed many members of the legislature on its behalf. The passage of the act in the senate was facilitated by the fact that E. I. Wolf, the president of the senate, consented to introduce the bill. Assemblyman J. R. Dorsey, who was sponsor for the bill in the assembly of both the 1903 and 1905 sessions of the legislature, also rendered much valuable assistance.

Fortunately at the time of the enactment of this law, the State Labor Bureau was under able and energetic management. The school superintendents or principals were required to issue the age and schooling certificates, and to file a duplicate copy with the county superintendent of schools. Over nine thousand copies of the law were distributed by the Labor Commissioner to all parts of the state, and the school authorities were supplied with the blank forms for the certificates, so that by the time the law went into effect its terms were familiar to the public. The Labor Commissioner reports that both the public and parochial school principals, with but few exceptions, have cheerfully assisted in the enforcement of the law, and that about fifty newspapers published the law, many of them with favorable comments.

The officers of the Labor Bureau also visited some 2,000 establishments where 11,000 minors under eighteen were employed. Of these, 2,500 were boys, and nearly 3,000 were girls between fourteen and sixteen years of age. They found that over eleven per cent. of the employees of the stores and factories of the state were minors under eighteen years of age. The provision of the law most difficult to enforce has been that requiring the nine-hour day. Excluding the children under fourteen from employment has resulted in an increased demand for older boys and girls, so that they have been able to command better wages.[66]

After about six months of these efforts to give publicity to the law, and to enable the careless but well-disposed employer to conform to its requirements, it became evident that the residue of violations could only be reached by prosecutions in the courts. The officers of the Labor Bureau swore out complaints in both

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[66] A full account of the efforts to enforce the child-labor law is given in a paper prepared by Commissioner Stafford for the Commonwealth Club. It is published in the *Labor Clarion* of April 13, 1906.

San Francisco and Los Angeles. But the police courts seem to have been very reluctant to enforce the law. The Labor Commissioner reports, "In one instance a case was continued thirteen times before the defendant was found guilty, and after this there were two continuances for sentence, at which time fines of $100 on one count and $50 in the other were imposed by the court, and the defendant's counsel gave notice of appeal. This happened six months ago, and at this writing the bill of exceptions has not been settled."[67]

J. M. Spencer, one of these employers who was charged in four different cases with violating the provisions forbidding the employment of children under fourteen years of age, appealed his case to the Supreme Court. The chief ground for attacking the constitutionality of the law was the claim that it was special legislation showing unfair discrimination. The decision, which was written by Justice Shaw and concurred in by the other judges of the court, fully sustained the law. The argument begins with the establishment of a presumption in favor of the constitutionality of the law,[68] and then proceeds to a consideration of the more positive reasons for recognizing its validity.

Children were held to be fit subjects for the exercise of the special police power of the state. "From their tender years, immature growth, and lack of experience and knowledge, minors are more subject to injury from excessive exertion and less capable of self-protection than adults. They are therefore peculiarly entitled to legislative protection and form a class to which legislation may be exclusively directed without falling under the constitutional prohibitions of special legislation and unfair discrimination."[69]

It was charged that the law set aside the trades in which the employment of children is forbidden and subjected them to special restrictions, and that it unduly and without reasonable cause restrained minors in their right to work in any and every occupation in which they may wish to engage. The court held that the law appeared to have been framed in good faith for the protection of the children, and that the power to forbid their employment in certain occupations and not in all depends on the question of whether any appreciable number of children are employed in the callings not forbidden. There could be no serious doubt that, if certain occupations are more harmful than others, the legislature had a right to forbid the employment of children in them. It was pointed out that the specifications of the forbidden callings are broad and comprehensive. The argument on this point concludes, "The decision of the legislature, that the specified occupations are more injurious to children than others not mentioned and hence the subject of special legislation, and that they constitute practically all the injurious occupations in which children are employed at all, and therefore the only cases in which regulation is needed, is not so manifestly incorrect, nor so clouded with doubt concerning its accuracy, as to justify the court in declaring it unfounded and the law, consequently, invalid."[70]

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[67] *Labor Clarion*, April 13, 1906.

[68] "The presumption always is that an act of the legislature is constitutional, and when this depends on the existence, or non-existence, of some facts, or state of facts, the determination thereof is primarily for the legislature, and the courts will acquiesce in its decision, unless the error clearly appears." (*In re Spencer*, 149 Cal. 400.)

[69] *In re Spencer*, 149 Cal. 400.

It was held that the section permitting a judge of a juvenile court to grant permits allowing children over twelve to work in cases where the parents are incapacitated through illness does not discriminate against orphan and abandoned children, since the provision is for the benefit of the parent, and in these latter cases there are no parents whose necessities the child's labor could alleviate.

The court also failed to sustain the charge that the issuing of vacation permits gave exclusive power to principals of the public schools, as the same right is given to officers of private schools. The extent of the permit is measured in all cases by the vacation of the public schools. This requirement is in keeping with the compulsory education law passed at the same time; by these enactments all children under fourteen are required to attend some school for a period corresponding with the session of the public schools.[71]

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[70] *In re Spencer*, 149 Cal. 402-404.

[71] *Statutes of California and Amendments to the Codes*, 1905, p. 388.

Finally it was declared, "The proviso concerning illiterate children is a reasonable regulation to prevent those having control of such children from working them to such an extent as to hinder them from acquiring, or endeavoring to acquire, at least the beginning of an education before arriving at the age of sixteen years. The exemption of domestic labor and the several kinds of farming from the operation of the act is not an unreasonable discrimination. Such work is generally carried on at the home and as a part of that general home industry which should not be too much discouraged, and it is usually under the immediate care and supervision of the parents or those occupying the place of parents, and hence is not liable to cause so much injury. These circumstances distinguish them from the prohibited industries and is a sufficient reason for the exemption."[72]

The larger part of the work of prosecuting the violations of the child-labor law fell to J. M. Eshleman, the deputy Labor Commissioner.[73] In 1907, he was elected a member of the legislature, where he assisted in securing the passage of two amendments to the law. By these, the school attendance officers are given the right to enter places of employment to see whether children are working in violation of the law; and horticultural labor is defined as including the curing and drying, but not the canning of fruit.[74]

COMPULSORY EDUCATION LAWS.

In an indirect way the compulsory education laws correct some of the same evils combatted in the child-labor legislation. The California code of 1872 copied the section of the New York code which required the parents to give a child "support and education suitable to his circumstances."[75] The first compulsory education law was passed in 1874.[76] This provided that, unless excused by the board of education or school trustees, children between eight and fourteen years of age must attend school for at least two-thirds of the school term in the place where they lived, twelve weeks of the attendance to be consecutive. In 1903 a new compulsory education law was enacted, by which the minimum time required was extended to five months. The law also made provisions for the appointment of truant officers and the establishment of parental schools. After the passage of the child-labor law of 1905, the compulsory education statute was amended so that the children are now required to attend during the entire school term.[77]

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[72] *In re Spencer*, 149 Cal. 404.

[73] See resolutions of appreciation of the S. F. Labor Council, *Labor Clarion*, July 27, 1906.

[74] *Statutes of California, etc.*, 1907, p. 598.

[75] *Civil Code*, 1872, Sec. 196, N. Y. C. C., 1862, Sec. 77.

[76] *Statutes of California*, 1873-4, pp. 751-2.

EFFECTS OF THE ENFORCEMENT OF THESE LAWS.

The efforts to educate the public to an appreciation of the significance of these laws and to secure their enforcement immediately bore fruit in the return to the schools of many children who would otherwise have been at work. Commissioner Stafford estimates that in San Francisco alone 2,000 children under fourteen years of age were thus permitted a better opportunity to obtain an education, and that 3,000 more of these little workers were relieved in other sections of the state.[78] A part of this decrease is also shown in the United States Census report of the development of manufactures in California between 1900 and 1905. While the average number of wage-earners engaged in such industries increased thirty per cent., the number of children employed decreased 14.1 per cent.[79]

LAWS PROTECTING WORKING CHILDREN FROM IMMORAL INFLUENCES.

In addition to the laws regulating the hours of labor and age limit of employment of minors, there are several statutes which aim to prevent the exposure of children to immoral influences. A law was passed in 1860 which imposed a fine of $500 or imprisonment for three months, on any one who employed a female under seventeen years of age to dance, play on a musical instrument, or otherwise exhibit herself in any drinking saloon, public garden, ball room, or other place of public assembly.[60] Since 1876 it has been a misdemeanor for any one having the custody of a child under sixteen years of age to apprentice, give away, let out, or otherwise dispose of such child, or use or employ him for singing, playing on musical instruments, rope-walking, dancing, begging, or peddling in any public street or highway, or in any mendicant or wandering business whatsoever.[61] Two years later this law was strengthened by the addition of other forms of prohibited amusements, and by provisions forbidding such employment in all obscene, indecent, or immoral exhibitions, or in any mendicant or wandering business, or in any business injurious to the health or dangerous to the life and limb of such a child.[62]

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[77] *Statutes of California, etc.*, 1905, p. 388.

[78] *Labor Clarion*, April 13, 1903.

[79] Twelfth Census, Manufactures, Part II, p. 51.

Minors are also protected from immoral influences by laws forbidding parents, guardians, employers, or any other persons sending them to saloons, gambling houses, houses of prostitution, variety theaters, or other places of ill-repute.[63] It is not only a misdemeanor to send messenger boys to such places, or to persons connected with such places, but also any one who permits a minor to enter one of these houses where he may become acquainted with vice, is guilty of a misdemeanor.[64]

NEED OF BETTER ENFORCEMENT OF THE LAWS FOR THE PROTECTION OF CHILDREN.

The great need in California is not more legislation for the protection of children, but a better enforcement of such laws as we already have on the statute books. Just because the child-labor problems have not assumed the distressing proportions of other sections of the country, there has been much indifference about the enforcement of the measures that might protect the relatively small number among us whose unfortunate circumstances have forced them to become bread-winners at an early age. The appropriation allowed the Labor Commissioner is entirely inadequate to secure the factory inspectors necessary for the enforcement of the laws. Even with an increased number of officials, there would still be need of the active co-operation of all good citizens who have the welfare of the coming generation at heart.

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[60] *Statutes of California*, 1860, pp. 86-7. Theaters were excepted from this prohibition.

[61] *Acts Amendatory to the Codes of California*, 1875-6, p. 110. *Penal Code*, Sec. 272.

[62] *Ibid.*, 1877-8, p. 813. This law was declared constitutional in *In re Weber*, 149 Cal. 392.

[63] Enacted in 1887, Sec. 1389, of *Penal Code*, *Statutes of California*, etc., 1905, p. 760-1.

[64] For the re-codification of all these measures see *Statutes of California*, etc., 1905, p. 759. *Penal Code*, Secs. 273, 273e.

CHAPTER XI.

LAWS FOR THE PROTECTION OF THE WOMEN WORKERS OF CALIFORNIA.

RELATIVELY SMALL NUMBER OF WOMEN WAGE-EARNERS.

Owing to the presence of the Chinese and Japanese, women's labor has contributed less to the economic development of California than it has to that of other states of the Union. Because of this relative lack of importance, comparatively little attention has been given to legislation for the protection of the women workers. Indeed, the labor organizations, as well as the laws of the state, have sought to insure equal opportunities rather than any special protective legislation.

When the Chinese first came to California, they were employed chiefly in the mines and in building railroads; it was only at a later period that they entered extensively into domestic service. Apparently their entrance into the homes of the state was due to the impossibility of securing an adequate supply of women workers. The reports of the California Labor Exchange show that throughout the time that it was in operation (1868-1871), the demand for women servants was nearly twice as great as the supply. Even when the secretary reported a decrease of fifty per cent. in the orders for men workers, he added that the demand for women who would work in families was unabated. Nearly all these early domestic workers were Irish. During the first six months of the operation of the Labor Exchange,[1] fourteen hundred women were furnished positions; of this number over a thousand were born in Ireland.

If we may judge by one of the earliest decisions dealing with the rights of women workers, the California courts were disposed to give ample protection to these women who were earning their living in other people's homes. In 1869 a claim of a servant girl for extra pay came before a San Francisco court. When she was engaged, her mistress had stipulated that she wait upon a family of five and receive thirty dollars per month. The girl worked five months, during which time the family was swelled by visitors, so that it averaged nine instead of five. The girl's demand for an increase of wages was refused. Whereupon, she left and employed a lawyer to bring suit for additional pay covering the time she had been at work. After carefully consulting the formidable array of authorities cited, the judge decided that the girl was entitled to $100 additional wages. In publishing the report of the case the editor of the paper remarks, "This decision is evidently a just and equitable one."[2]

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[1] *Alta*, November 12, 1868, report of Labor Exchange: 1402 females given employment; the chief nationalities were Irish, 1073; American, 121; German, 93; Scotch, 57.

The women workers do not seem to have participated in the labor movement of the sixties. Printing was the only organized trade in which they were occupied. They were not admitted to membership in the Typographical Union until some time after the strike on the newspapers in 1883. In this strike, and also in that of 1870, women compositors were engaged to do the work of the strikers. Before 1870 they were not employed on the newspapers, but were successful in job-printing work. The Women's Co-operative Printing Union was able to compete successfully for this class of work, employing in 1870 as many as sixteen persons, ten of whom were women. The *Pioneer*, a paper devoted to women's rights, was also printed by women. The small papers in interior towns sometimes employed women compositors.[3]

The public school teachers were the first women workers in California to receive legal protection.[4] In 1874 a law was passed to prevent discrimination against female teachers. It provided that, when doing the same grade of work, women teachers should receive the same pay as men.[5]

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[2] *Call*, December 1, 1869, p. 3.

[3] "Women at the case," *Bulletin*, November 15, 1870, p. 3.

[4] The sections of the Penal Code prohibiting the employment of female minors in theaters, dance-halls, etc., have been treated in the chapter on the child-labor laws. They were police measures rather than laws regulating the labor of women workers. These sections (303 and 306) were repealed in 1905, as under the decision *Ex parte Maguire*, they were held to be unconstitutional. (*Statutes of California and Amendments*, 1905, 658, 657.)

[5] *Statutes of California*, 1873-1874, p. 938.

EFFORTS TO SECURE CONSTITUTIONAL RECOGNITION OF WOMEN'S RIGHTS.

Several members of the Constitutional Convention of 1878-9 seem to have been ardent advocates of women's rights. A number of resolutions were introduced which aimed to extend the right of suffrage to women.[6] It was also proposed by one of the representatives of the Workingmen's Party that the Constitution require that one-half of the employees of the State Printing Office, and one-half of the clerical force in the public offices of the state, be women.[7] However, these more radical measures failed of adoption, the constitution-makers contenting themselves with a section which provides that, "No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession."[8] It is difficult to see just what prompted this declaration of women's right to work. Certainly we have found no evidence indicating that the women of California had ever been refused the privilege of engaging in any occupation they wished to enter. Probably it was inserted as a compromise measure to satisfy the members of the Convention who had advocated the more radical provisions on women's rights.

This section of the Constitution has been of very doubtful value to the women workers of the state. It will probably stand in the way of any special protective legislation, and, as yet, has been invoked only in defense of the right of women to dispense liquors in saloons. Soon after the adoption of the Constitution, a woman was arrested for the violation of a San Francisco ordinance making it a misdemeanor for any woman to act as an attendant in any dance-cellar, bar-room, or other place where intoxicating liquors were sold. The woman was discharged from custody, on the ground that the ordinance was unconstitutional, because it disqualified a woman from pursuing a business lawful for men.[9]

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[6] California Constitutional Convention, pp. 97 and 104.

[7] Debates and Proceedings of the California Constitutional Convention, 1878-1879, p. 120.

[8] Constitution of California, Art. XX, Sec. 18.

[9] *Ex parte Maguire*, 57 Cal. 604 (1881). The case was tried "in bank." Four judges concurred in the decision and two dissented. The section (303) of the Penal Code similar to the ordinance was also declared unconstitutional, and has since been repealed.

It was contended that the inhibition of the ordinance was not on account of sex, but because of its tendency to immorality. While granting that such was the design of the ordinance, it was held that this object must not be accomplished by excluding a woman from a lawful business, as the law would not countenance an attempt to do by indirection what could not be done directly. As to the claim that this was but an exercise of the police power granted by the Constitution, it was pointed out that the section in question imposed a restraint on every law-making power in the state. The court declared, "This power to make police regulations is as much restrained by the section just referred to as is the legislative power vested in the Senate and Assembly. Both grants of power are alike made by the Constitution, and both are alike restricted by this section of article XX."[10]

WOMEN IN THE TRADE-UNIONS.

By the time we reach the second great period of trade-union activity, between 1886 and 1891, the conditions in California with reference to the employment of women had changed. The reluctance to take positions as domestic servants, which is common to all sections of the country, was increased here by the fact that the Chinese were largely employed in that capacity. The women workers found employment in the fruit canneries, in the shoe and glove factories, at cigar making, in the various sewing trades, in the laundries and in all sorts of clerical positions. In many of these occupations they came into competition with Chinese, and in cigar making they sometimes worked at the same bench.[11]

The records of the Federated Trades Council show that the women workers in many of these trades were organized, and took part in the activities characteristic of the labor movement at this time.[12] We find the girl shirt makers sending a delegation to the men's unions to call attention to their label.[13] The girl workers in the shoe factories were well organized, and had a representative in the Federated Trades Council. The glove workers were also unionized. The printers were among the first to admit women to full trade-union membership. We have been unable to find the date when this occurred, but the *Union Printer* for November, 1886, contains the following notice, "For some time past the lady members of the Union have been agitating the idea of attending the meetings, and the culmination was the appearance of some twenty-five at the last meeting."[14]

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[10] *Ex parte Maguire*, 57 Cal., p. 607-8.

[11] Fourth Annual Report of the U. S. Com. of Labor., p. 25-6.

[12] The *Coast Seamen's Journal* publishes items about women workers in the following issues: November 2, 1887; March 12, 1888; July 23, 1890; January 29, 1891; April 29, October 9.

The Knights of Labor interested themselves in the condition of the women workers of San Francisco, and organized an Assembly composed entirely of women. In March, 1888, a mass meeting was held under the auspices of this Assembly for the purpose of considering ways of bettering the condition of the working women of the city, particularly those engaged in the sewing trades. This meeting was presided over by Mayor Pond, and a number of prominent speakers gave advice and commended the efforts being made.[15]

Attention was also attracted to the condition of the women workers by investigations which were being made at this time by both the United States Labor Bureau and the State Bureau of Labor Statistics.[16]

PASSAGE OF THE LAWS PROTECTING WOMEN WORKERS, 1889.

In response to this general public interest, the State Labor Commissioner undertook in 1889 to secure the passage of two measures for the protection of the women wage-earners of the State. One of these has already been noticed in the account of the legislation for the protection of minors. The child-labor law of 1889, as originally drafted, provided that no minor under sixteen or female under eighteen should be required or permitted to work more than sixty hours in one week.[17] This was amended so that it would apply to all minors under eighteen, thus avoiding the constitutional prohibition of discrimination between the sexes.[18]

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[13] Minutes of the Coast Seamen's Union for March 12, 1888, and July 21, 1890.

[14] Two of the women were promptly appointed members of one of the committees.

[15] *Alta*, March 16, 1888, p. 4.

[16] *Fourth Annual Report of the U. S. Com. of Labor*, Working Women in Large Cities. *Third Biennial Report of the Bureau of Labor Statistics* (1887-1888), p. 14.

The act to provide for the proper sanitary condition of factories and work shops was the second measure introduced at this time for the protection of the women workers. This law requires that the places of work shall be in sanitary condition, and properly ventilated. When workers of both sexes are employed, separate toilet facilities must be provided. Section 5 of this law read: "Every person, firm, or corporation employing females in any manufacturing, mechanical, or mercantile establishment shall provide suitable seats for the use of the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed."[19] In 1903 this was amended by a specification that the number of seats must be at least one-third of the number of women so employed.[20]

The State Labor Commissioner is charged with the duty of enforcing these laws. His inadequate force has made it impossible to meet this obligation effectively. At more or less irregular and lengthy intervals the places of business in and near San Francisco have been inspected. We have been unable to find any record of a prosecution for the failure to comply with the laws, though undoubtedly there have been many violations.

Notwithstanding the fact that the peculiar provision in the Constitution of California in regard to women workers would probably result in it being declared invalid, two unsuccessful attempts have been made to secure a law limiting the hours of labor of adult women. In both the 1905 and 1906[21] sessions of the legislature bills of this kind were introduced. While these measures were endorsed by the State Federation of Labor, no active campaign to secure their passage was undertaken.

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[17] *Coast Seamen's Journal*, December 12, 1888.

[18] *Statutes of California and Amendments, etc.*, 1889, p. 4.

[19] *Ibid.*, p. 3.

[20] *Ibid.*, 1903, p. 16.

[21] Senate bill No. 479, Assembly bill No. 512, Senate and Assembly Journals, 1906.

Undoubtedly many of the women workers of the state suffer from excessive hours of labor. In large establishments where their hours necessarily conform to those of the men and children, this evil is not so common; but there are many cases of excessive hours of labor in the smaller places of business. The bakeries, delicatessen stores, and candy shops afford examples of the most flagrant abuses of this kind. These are generally open seven days in the week, and the girls often serve fifteen hours or more a day, with a half-day off once in two weeks.[22]

As yet the trade-unions have furnished the only effective protection from this evil. Many of the women have made substantial gains through their unions.[23] The laundry workers and telephone operators of San Francisco afford striking examples of the possibility of remedying particularly bad conditions of work by this means. Among the other organized trades are the garment workers, waitresses, the workers in boot, shoe, glove, and paper-box factories, cigar workers, bottle-caners, tin-can factory employees, and various other trades where the women are admitted to membership in the men's unions. While the women trade-unionists rarely take an active part in the general labor movement, they are represented in the central bodies. Their delegates vote on all the questions that come before these bodies, and sometimes serve on the committees.

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[22] While acting as special agent of the State Bureau of Labor Statistics in the fall of 1904, the author found many such cases in San Francisco and Oakland.

[23] Prof. Jessica B. Peixotto has presented an able discussion of the subject of "Women of California as Trade-Unionists" at the annual meeting of the Association of Collegiate Alumnae; see Serial III, No. 18, of the *Publications* of the Association of Collegiate Alumnae.

CHAPTER XII.

LAWS FOR THE PROTECTION OF THE LIFE AND HEALTH OF EMPLOYEES.

In California we still have the marked individualistic tendencies that have always been characteristic of the Western frontier. Her citizens do not turn naturally to the state for protection, but assume the ability of every grown man to look out for his own interests. The severer competition that comes with more crowded conditions and the development of the highly organized industries has not yet been felt to any great extent. Not only the character of the people and the relatively simple economic conditions, but also the climate, have made less urgent the necessity for legislation for the protection of the health of employees. As a result of these conditions, there has been but little legislation of this kind, and such laws as have been enacted have been enforced in a somewhat desultory manner.

BOILER INSPECTION.

The first law of this kind, that requiring care in the handling of steam boilers, was for the protection of the general public rather than of the fellow-employees of the engineers in charge. The need of such legislation was first made evident by the reckless manner in which the river steamers were sometimes run. Though an attempt was made to pass such a law in 1866,[1] the sections inserted in the Penal Code in 1872 seem to have been the earliest enactments on this subject.[2]

Section 349 of the Penal Code provides that any engineer or person in charge of a steam boiler, "who wilfully, or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor."[3] Two years later this section was amended by making such mismanagement a felony.[4] If the accident causes the death of a human being, the person guilty of carelessness or neglect is punishable by imprisonment in the state penitentiary for not less than one nor more than ten years.[5]

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[1] *Bulletin*, editorial, February 7, 1866.

[2] *Penal Code* of 1872, Sec. 349. (Amended in 1874, Acts Amendatory of the Codes of California, 1873-4, p. 431). Also *Penal Code*, Sec. 368.

The legislature made provisions in 1876 for the appointment of an inspector of steam boilers for San Francisco. This inspector was authorized to test all stationary boilers and steam tanks, and also to examine and license engineers. The law made it unlawful to employ any one to serve in such a capacity unless he held a license. This law was repealed in 1880. Since then the erection and inspection of boilers and the licensing of engineers has been regulated by municipal ordinances.[6]

SAFETY OF MINERS.

The legislation for the protection of miners seems to have been prompted by serious accidents in mines which suggested the need of enacting laws that would give future protection. In the fall of 1871 there was a fire in the Amador Mine. But for the existence of a second shaft, eighty or a hundred miners might have lost their lives. At the next session of the legislature a law was passed which provided that when the shaft of a mine was three hundred feet or more in depth, and as many as twelve men were employed, the owners of the mine must construct a second shaft, or mode of egress, connecting with the first at a depth of not less than one hundred feet.[7]

Two years later 300 coal miners sent in a petition to the legislature stating that four men had recently been suffocated by an explosion of gas in a mine from which there was but one way of egress,[8] and requesting that a law be passed for their protection. The legislature promptly granted their petition, enacting a law which required the posting of a map of the mine where the men could see it, the construction of two shafts or methods of egress, the installation of an adequate system of ventilation, and the employment of an inside overseer, who was to be held criminally liable for accidents due to the neglect of his duty.[9]

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[3] *Penal Code*, 1872, Sec. 349.

[4] *Acts Amendatory of the Codes of California*, 1873-4, p. 431.

[5] *Penal Code*, Sec. 368.

[6] *San Francisco General Ordinances*, pp. 38, 446, 447.

[7] *Statutes of California*, 1871-2, p. 413.

[8] *Sacramento Daily Union*, March 21, 1874, p. 8.

Both of these laws for the protection of miners are weak in that no penalty accrues unless an accident causing injury to an employee occurs, and then the law merely allows the injured person to bring an action for damages.[10]

The legislature furnished further safeguards for the protection of miners by enacting a statute in 1893 providing a uniform system of bell signals to be used in the mines of the state, and prescribing rules for hoisting, lashing timbers, and posting signals. As in the earlier laws, but slight penalties are provided. Failure to comply with the law is sufficient ground for the discharge of the employee, or when the employer is the negligent party, he becomes liable for damages accruing.[11]

SANITATION OF WORKSHOPS.

The first laws passed in California for the purpose of securing sanitary workshops were the ordinances regulating laundries. These were intended primarily for the control of the Chinese laundries, though they were applicable to all such establishments. The San Francisco ordinances required, among other provisions, that buildings erected for use as laundries after March 1, 1880, should be one story in height and constructed of fireproof materials.[12] The ordinance of 1883 made it necessary for all laundries located within certain limits to obtain a certificate from the health officer showing that the premises were properly drained, and also from the fire wardens stating that the heating appliances were in good condition. Even then the laundries were prohibited from doing washing and ironing between 10 p.m. and 6 a.m., or on Sunday. These ordinances were fully tested in the courts, where they were held to be constitutional as police and sanitary measures.[13]

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[9] *Statutes of California*, 1873-4, p. 727, Sec. 9.

[10] Sec. 3. "When any corporation, association, owner, or owners of any quartz mine in this State shall fail to provide for the proper egress as herein contemplated, and where any accident shall occur, or any minor working therein shall be hurt or injured, and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner or owners of the mine where the injuries have occurred shall be liable to the person injured in all damages that may accrue by reason thereof; and an action at law in a Court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue . . . heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an Act . . . approved April twenty-sixth, eighteen hundred and sixty-two." (*Statutes of California*, 1871-2, p. 413.)

[11] *Statutes of California*, 1893, pp. 82-84.

[12] This ordinance has since been repealed.

The requirements of inspection and certification of laundries are still enforced. Through the efforts of the Labor Commissioner, the section prescribing the hours of labor was amended to read "between 7 p.m. and 6 a.m." A section has been added which forbids any person suffering with an infectious disease sleeping or lodging in a laundry.[14]

The Act of 1889 "to provide for the proper sanitary condition of factories and workshops, and the preservation of the health of the employees," was suggested by the State Labor Commissioner, and endorsed by the San Francisco Federated Trades Council. While applicable to all factories, the measure was prompted by the efforts made at that time to better the condition of the women workers of the city. We have already noticed the provisions of the law specifically applicable to women.[15] Among the more general provisions are the requirements of cleanliness, such ventilation as will remove noxious gases and injurious dust, and freedom from the dampness and darkness of underground apartments.[16]

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[13] *Ex parte Moynier*, 65 Cal. 33; *Ex parte White*, 67 Cal. 102; *In the matter of Yick Wo*, 68 Cal. 294; *In the matter of Hang Kie*, 69 Cal. 149.

[14] San Francisco General Ordinances in effect December 1, 1907, pp. 536-538.

[15] See chapter on Women Workers.

[16] Sec. 1. "Every factory, workshop, mercantile or other establishment, in which five or more persons are employed, shall be kept in a cleanly state and free from the effluvia arising from any drain, privy or other nuisance, and shall be provided, within reasonable access, with a sufficient number of water-closets or privies for the use of the persons employed therein. . . .

Sec. 2. Every factory or workshop in which five or more persons are employed shall be so ventilated while work is carried on therein that the air shall not become so exhausted as to be injurious to the health of the persons employed therein, and shall also be so ventilated as to render harmless, as far as practicable, all the gases, vapors, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein, that may be injurious to health.

Sec. 3. No basement, cellar, underground apartment, or other place

Section 4 of this law provides, "If in any factory or workshop any process or work is carried on by which dust, filaments, or injurious gases are generated or produced, that are liable to be inhaled by the persons employed therein, and it appears to the Commissioner of the Bureau of Labor Statistics that such inhalations could, to a great extent, be prevented by the use of some mechanical contrivance, he shall direct that such contrivance shall be provided, and within a reasonable time it shall be so provided and used."

The attempt of Commissioner Meyers to enforce this section brought the law before the courts in 1901. A metal-polishing firm refused to furnish the suction exhauster ordered by the Commissioner for the purpose of removing the dust generated in the course of the work. The Police Court and Superior Court held the firm subject to the fine provided in the law, but when brought before the Supreme Court the law was held to be unconstitutional.

In this decision the power of the legislature to require sanitary conditions and reasonable safeguards was not questioned. But, as worded, the law permitted the Labor Commissioner to be the judge, not only of the need of means for the removal of the dust, but also of the character of the appliance to be installed. Thus he no longer merely enforced the law made by the legislature, but became a lawmaker for individuals.[11]

In order to meet these objections Commissioner Meyers drafted an amendment to the law which requires that all establishments where dust, filaments, or injurious gases are generated

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which the Commissioner of the Bureau of Labor Statistics shall condemn as unhealthy and unsuitable, shall be used as a workshop, factory, or place of business in which any person or persons shall be employed. (*Statutes of California and Amendments to the Codes*, 1889, pp. 3-4.)

[11] "Therefore, the power of the legislature by general law to provide for the proper sanitation of factories, foundries, mills, and the like, does not call for discussion. It is no invasion of the right of the employer freely to contract with his employee, to provide by general law that all employers shall furnish a reasonably safe place and reasonably wholesome surroundings for their employees. The difficulty with the present law, however, is that it does not so provide, but that it is an attempt to confer upon a single individual the right arbitrarily to determine, not only that the sanitary condition of a workshop or factory is not reasonably good, but to say whether, even if reasonably good, in his judgment, its condition could be improved by the use of such appliances as he may designate, and then to make a penal offense of the failure to install such appliances." (*Schaezlein v. Cabaniss*, 135 Cal. 466, 468-9.)

in the process of the work, shall install exhaust fans and blowers with properly adjusted hoods and pipes. This was passed and at the same time the penalties for failure to comply with the law were increased.[18]

In the same year the law creating the Labor Bureau was amended by the addition of the section authorizing the Commissioner to inspect scaffolding. The object of the latter amendment seems to have been not so much the requirement of such inspection, as the furnishing of an authorized referee when any question of the safety of scaffolding arises.[19]

The California legislators have always manifested a great willingness to enact laws suggested as necessary for the safety of workmen. These laws were all passed by a unanimous vote or with very little opposition. However, they have always been carelessly enforced. It will be necessary, as the industrial life of the state becomes more highly organized, to give more careful attention to the matter of regulating injurious trades, and to the more efficient discharge of this duty of the state to afford her citizens every possible guarantee of healthy conditions of labor.

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[18] *Statutes of California and Amendment to the Codes*, 1901, p. 571.

[19] *Ibid.*, pp. 12-13.

CHAPTER XIII.

SUNDAY LAWS.

EARLY EFFORTS TO PREVENT THE VIOLATION OF THE SABBATH.

The first California Sunday laws were passed in protest against the immorality and irreligion that characterized the early mining camps. In this mingling of all nations in a society where the restraints of home life and established institutions were lacking, there was a tendency to adopt the customs of those who had the least regard for the observance of the Sabbath. It was the day when the miners gathered in the nearest town to buy their supplies for the coming week, and spend their leisure in gambling, drinking, and attending the coarse entertainments which such places afforded. When the first attempt was made in 1852 to pass a law to prevent these flagrant violations of the Sabbath, the majority report of the committee to whom the bill had been referred declared, "The unbridled licentiousness, and the prevalence of so much vice and immorality within the borders of our state, have had strong tendencies to retard the permanent settlement of the country, and depress the minds of the emigrant families who have made this their permanent home."[1]

But the members of the Assembly, where the bill was presented, were more disposed to adopt the views of the minority report of the committee, which declared that, in a government where the church and state were so completely separated, this was not a suitable subject for legislation; such a measure would not receive the support of the public opinion of the state, and its penalties were too severe.[2] Attempts were made to strike out various portions of the bill,[3] and finally it was indefinitely postponed.[4]

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[1] *Assembly Journal*, 1852, p. 276.

[2] *Ibid.*, 282.

[3] *Ibid.*, 310.

[4] *Ibid.*, p. 311.

In the following year the church people instituted a more systematic campaign on behalf of the law. Petitions were circulated throughout the state. These declared that most of the crime and dissipation of the mining camps occurred on Sunday. It was claimed that the American merchants, mechanics, and bankers would gladly cease from doing business, if their Mexican, French, and Jewish competitors were compelled to close their places of business on Sunday. The classes of amusements such as fandangoes, bull, bear, and cock fighting, horse-racing, gambling, etc., were particularly offensive.[5] In 1853 the bill passed the Senate, but was again defeated in the Assembly.[6]

Those interested in the law continued to petition the legislature,[7] and finally in 1855 the first Sunday law was passed. This undertook only to prevent the more flagrant violations of the Sabbath. It provided that "Any person who shall get up, or aid in getting up, or opening of any bull, bear, cock, or prize fight, horse race, circus, theatre, bowling alley, gambling house, room or saloon, or any place of barbarous or noisy amusements on the Sabbath, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not less than fifty nor more than five hundred dollars."[8] Persons patronizing such amusements were subject to the same penalty.

Three years later another Sunday law was passed, which undertook to compel the suspension of ordinary business. As originally drafted, this bill had a proviso which permitted any one who believed that the seventh day should be observed as the Sabbath, and who refrained from secular business or labor on that day, to be exempted from the requirements of this law. When the measure came before the legislature, the chief contest was over this provision. It was claimed that it would defeat entirely the object of the bill,—the closing of the stores and cessation of business. So long as the Hebrew merchants kept their stores open on Sunday, the other merchants were compelled to do so in order to compete with them. The object of the bill was to set aside one day as a day of rest and recreation for all. The day selected was the one observed by the great majority of the people. It was also contended that such an exemption would tend to emphasize and perpetuate race differences.[9]

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[5] *The Pacific*, January 7, 1853, p. 270.

[6] *Ibid.*, May 13, 20. See also February 4, 11, March 4, *Assembly Journal*, Petitions, 159, 163, 207, 350. Report of Committee, 328. Ap. 43, 54, 328, 350, 647. *Senate Journal*, 607, 613, 637.

[7] *Senate Journal*, 1854, 446, 451. *Assembly Journal*, 1854, 210, 268, 288, 495, 507. Passed Assembly, died on Senate files.

[8] *Statutes of California*, 1855, p. 50.

As finally passed the law read, "No person or persons shall, on the Christian Sabbath, or Sunday, keep open any store, warehouse, mechanic shop, workshop, banking-house, manufacturing establishment, or other business house, for business purposes; and no person or persons shall sell, or expose for sale any goods, wares, or merchandise on the Christian Sabbath, or Sunday, etc."[10] The law also made it a misdemeanor to disturb any religious meeting.

ARGUMENT ON THE VALIDITY OF THE LAW OF 1855.

The validity of the law was soon tested in the case of one Newman,[11] a Sacramento merchant. As Newman was a Hebrew, great emphasis was laid upon the argument that the law interfered with his religious freedom. It was claimed that it violated the Constitution by establishing a compulsory religious observance. Such a law might be suitable for infants or persons bound to obey others, but when applied to free agents it was an unwarrantable interference with the right to regulate their own labor. "If the Legislature could prescribe the days of work for them, then it would seem that the same power could prescribe the hours to work, rest, and eat."[12] The opinion was written by Chief Justice Terry and concurred in by J. Burnett.[13]

Justice Field made an able dissenting argument. He maintained that this was a purely civil regulation, that the prohibiting of business did not conflict with the constitutional guarantee of freedom of worship, as there was no connection between the sale of merchandise and religious worship.

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[9] *Bulletin*, January 30, 1858, p. 3. *Ibid.*, February 26, p. 3.

[10] *Statutes of California*, 1858, p. 124-5.

[11] *Ex parte Newman*, 9 Cal. 518.

[12] *Ex parte Newman*, 9 Cal. 518.

[13] S. J. Field was elected Judge of the California Supreme Court in 1857. He succeeded Judge Terry as Chief Justice in 1859. He was appointed Associate Justice of the United States Supreme Court in 1863, which position he held until 1897.

This early dissenting opinion has many of the brilliant qualities that characterized Judge Field's work during his long term as Associate Justice of the United States Supreme Court. His power of original thought is appreciated when one remembers that the following argument was written fifty years ago:[14] "The position assumes that all men are independent, and at liberty to work whenever they choose. Whether this be true or not in theory, it is false in fact; it is contradicted by every day's experience. . . . Labor is in a great degree dependent upon capital, and unless the exercise of the power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise. . . . Its aim is to prevent the physical and moral debility which springs from uninterrupted labor; and in this aspect, it is a beneficent and merciful law. . . . Authority for the enactment I find in the great object of all government, which is protection. Labor is a necessity imposed by the condition of our race, and to protect labor is the highest office of our laws."

Judge Field also pointed out the universal acceptance of such legislation in other states of the Union. He had examined the statutes of twenty-five of these states, and had found similar laws, whose validity had, in every case, been sustained by the courts.

AMENDMENTS OF 1861-1872.

In 1861 the phraseology of the law was changed so as to emphasize its civil rather than its religious aspects. As in the earlier law, the exemptions from its operation were extended to merchants dealing in perishable goods, and to some manufacturers,[15] as well as to keepers of hotels, restaurants, and taverns. When this act came before the Supreme Court, the former decision was reversed; the majority of the judges adopted the arguments of Judge Field's dissenting opinion, and sustained the validity of the law.[16] When one reviews the history of the efforts to secure this legislation and the legislative debates and reports, there can be no question that the chief motives for the passage of the law were the religious ones, but its constitutionality was upheld by the claim that the measure was purely secular in character.[17]

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[14] *Ex parte Newman*, 9 Cal. 520-1.

[15] Sec. 1. "Any person who shall, hereafter, keep open on the first day of the week, commonly called Sunday, any store, work-shop, bar, saloon, banking house, or other place of business, for the purpose of transacting business therein, except as hereinafter especially provided, shall be guilty of a misdemeanor and on conviction thereof, shall be punished by a fine of not less than five, nor more than fifty, dollars.

Sec. 2. The provisions of this act shall not apply to the keeping open of hotels, boarding-houses, restaurants, taverns, livery stables, retail drug stores (for the legitimate business of each), or such manufacturing establishments as are necessarily kept in continued operation to accomplish the business thereof, nor to the sale of milk, fresh meats, fresh fish, or vegetables. (*Statutes of California*, 1861, p. 655.) In 1862 the sale of meats, game and vegetables in San Francisco on Sunday was prohibited. (*Statutes of California*, 1862, p. 90.) The same for Sacramento in 1868. (*Statutes of California*, 1868, 538.)

Though upheld by the courts, the law was not very satisfactory. Its friends found it difficult of enforcement,[18] and its enemies presented a bill at the next session of the legislature for its repeal. The members of the Committee on Public Morals to whom the bill was referred were unable to agree on its merits, and sent in three reports.[19] Two members favored the unconditional repeal of the law, declaring that it was inoperative, and objectionable because of its interference with religious freedom, and that as a police measure and means of protecting the laborer it was unnecessary and ineffectual. Two others were equally positive in their assertion of its beneficial effects, and the fifth member thought that public opinion sustained the closing of places of business, but that the parts of the law applying to places of amusement should be repealed. By a vote of 35 to 31 the bill to repeal was laid on the table.[20]

A supplementary measure requiring the San Francisco bath houses, barber shops, and hair-dressing establishments to close on Sunday at one o'clock,[21] was passed at this session of the legislature, and the sale of meats, game, and vegetables on Sunday was also prohibited.

The Sunday laws were again attacked in 1868. Assemblyman Broderson, who introduced the bills for their repeal, claimed that some fifteen thousand petitioners wished the repeal of these laws. It was generally claimed that the movement originated in San Francisco with the foreign population, particularly the Germans,[22] who were not accustomed to a rigid observance of Sunday. The part of the law which classed theatrical performances with "noisy and barbarous amusements" was particularly objectionable to the advocates of the repeal bills. It was asserted that under this law a fine of $500 had been imposed for the performance of Romeo and Juliet,[23] and that the occurrence subjected the state to ridicule.

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[16] *Ex parte Andrews*, 18 Cal. 679. (July, 1861.) See also *Ex parte Bird*, 19 Cal. 130.

[17] "The operation of this act is secular, just as much as the business on which the act bears is secular; it enjoins nothing that is not secular, and it commands nothing that is religious; it is purely a civil regulation, and spends its whole force upon matters of civil economy." (*Ex parte Andrews*, 18 Cal. 685.)

[18] *Bulletin*, October 6, 1862.

[19] *Appendix to Legislative Journals*, 13th Sess., Vol. 3.

[20] *Assembly Journal*, 13th Sess., p. 490.

[21] *Statutes of California*, 1862, p. 479.

The whole state was aroused by the controversy, and hundreds of petitions on the subject were sent to the legislature.[24] A special committee was finally appointed to relieve the Committee on Public Morals from the overwhelming mass of evidence on the subject. This special Committee on Sunday Laws finally reported a substitute bill which proposed to amend the Act of 1855 so that theaters and concerts would be excepted from the category of "noisy and barbarous amusements" prohibited by the law.[25] But this bill only passed the Assembly. Two years later a similar measure was passed, in which the concessions in favor of theaters and concerts were safeguarded by a provision that the Sunday closing requirement should continue to apply to all such places of amusement where intoxicating liquors were sold.[26]

While some of the citizens of Sacramento were among the petitioners for the repeal of the Sunday laws, it is evident that a majority favored the strict observance of the Sabbath, as permission was obtained in 1868 for the town trustees to prohibit by ordinance the keeping open of grocery stores and meat markets within the city limits, for business purposes during any portion of the Sabbath day.[27]

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[22] See report of the decision of Judge Provines, in *Alta*, May 12, 1868.

[23] "Sunday Laws," in *Sacramento Daily Union*, February 21, 1868, p. 4.

[24] *Assembly Journal*, p. 407; by following the references in the index many more may be found.

[25] Bill No. 616 passed Assembly, p. 817, by vote of 38 to 23.

[26] *Statutes of California*, 1869-1870, p. 52.

[27] *Statutes of California*, 1867-1868, 538.

When the California Codes were drafted in 1872, the law of 1855, as amended in 1870, was embodied in sections 299 and 302 of the Penal Code, while sections 300 and 301 perpetuated the law of 1858, as amended in 1861.

EFFORTS TO SECURE A SHORTER WORK-DAY FOR THE BAKERS.

The first trade-union efforts to promote Sunday legislation were made by the bakers.[28] The conditions of this trade were peculiarly oppressive, as the bakers not only worked long hours for seven days in the week, but also frequently boarded with their employer, so that there was no escape from the unsanitary conditions under which their work was often performed.

In 1880 the San Francisco Bakers' Verein, an organization of German bakers incorporated as a sick-benefit society, succeeded in securing the passage of an act for the prevention of Saturday night and Sunday work.[29] This law went into effect May 1, 1880, but was soon attacked in the courts, where it was held to be unconstitutional.

In the Supreme Court decision it was declared that the law was in conflict with the section of the Constitution which forbade the passage of local or special legislation. The law was also criticized because it provided that the master be punished because his employees performed labor in the forbidden time, while it placed no restraint on workmen who were not employers.[30]

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[28] The *San Francisco Labor Clarion* for September 4, 1908, p. 36, gives an excellent summary of the history of the Bakers' Union. The writer, Emil Eisolt, says that the bakers first organized in 1864 to secure better pay and a regulation of hours, though they did not at that time have the seven-day work. This was introduced by the strike-breakers imported from Hamburg. In 1869 they again organized to secure a day of rest, and succeeded in obtaining it for two months, and then returned to the old system. The 1880 law seems to have been their next attempt to obtain this concession.

[29] *Statutes of California*, 1880, p. 80. Sec. 1. "It shall be unlawful for any person engaged in the business of baking to engage, or permit others in his employ to engage in the labor of baking, for the purpose of sale, between the hours of six o'clock p.m. on Saturday, and six o'clock p.m. on Sunday, except in the setting of sponge preparatory to the night's work; *provided, however,* that restaurants, hotels, and boarding-houses may do such baking as is necessary for their own consumption."

[30] *Ex parte Westerfeld*, 55 Cal. 550. See Memorial of the San Francisco Bakers' Verein, *Appendix, Journal of Senate and Assembly*, 24th Sess., 3d Vol., 16 Doc.

REPEAL OF THE SUNDAY LAWS.

Soon after this unsuccessful attempt of the bakers, the older Sunday laws were brought before the Supreme Court in three cases where saloon-keepers had been arrested for their violation. In the first of these cases the whole history of the legislation and decisions on the Sunday question in this state was reviewed. The court decided that the constitutional prohibition of special and local legislation was not retroactive; it applies to all laws made after the adoption of the new Constitution in 1879, but does not operate to repeal laws passed prior to that time. The Sunday laws extended over the entire state, and applied to all persons, hence were uniform in their operation. The Supreme Court had repeatedly held them constitutional in the past, and again declared them valid.[31]

The third of these cases, decided in March, 1882,[32] was argued in a more exhaustive way before the entire Supreme Court sitting in bank. The validity of these sections of the Penal Code was again attacked. The title of this Chapter, "Of crimes against religion and conscience, and other offenses against good morals," was cited as evidence of the religious rather than civil character of these sections. Of the seven Judges, four upheld the constitutionality of the disputed sections, and three dissented. Judge Sharpstein wrote a particularly vigorous dissenting opinion. He asserted that no one who had lived in the state during the twenty years since the passage of these laws would claim that they had been even generally enforced.[33]

These decisions called attention to the possibility of enforcing sections 299, 300, and 301 of the Penal Code, with the result that those who were in favor of an "open" Sunday, particularly persons interested in the liquor traffic, entered upon a vigorous campaign to secure their repeal. In the fall election of 1882, the repeal of the Sunday laws was one of the important issues. All the political parties inserted planks on the subject in their platforms. The Democrats, who carried the election, announced their opposition to all "sumptuary legislation," and to "all laws intended to restrain or direct a free and full exercise by any citizen of his own religious and political opinion," and made known their intention to "oppose the enactment of all such laws, and demand the repeal of all those now existing."[34] In less veiled language the Republican,[35] Prohibition,[36] and Greenback-Labor[37] Parties declared themselves in favor of preserving one day in seven as a day of rest, and of the maintenance of the Sunday laws.

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[31] *Ex parte Burke*, 59 Cal. 6. *Ex parte Carson*, 59 Cal. 429 (1881). This case was decided on the authority of previous cases without further argument.

[32] *Ex parte Koser*, 60 Cal. 177.

[33] *Ibid.*, p. 214.

The Democrats obtained a majority of the members and promptly on the meeting of the legislature the bill for the repeal of Sections 299, 300, and 301, of the Penal Code, was introduced in both the Senate and Assembly.[38] The passage of the bill in the Senate seems to have been accepted as a foregone conclusion. Aside from the sarcastic suggestion that the title be amended to read, "An Act to encourage vice and immorality and to discourage moral improvement,"[39] it met with little opposition, the final vote standing 22-9.[40]

There was a greater disposition to contest the passage of the measure in the Assembly. The minority report of the Committee on Public Morals defended the Sunday laws on the ground that, aside from any religious consideration, they protected social customs that were highly beneficial. These laws had the same significance as the laws preventing the sale of liquor on election day, or in the vicinity of state institutions. It was expedient to prevent excesses on days of unusual temptation.[41] The bill was referred back to the committee with instructions to strike out the part which repealed the prohibition of such amusements as bull, bear, and cock fighting, horse-racing, etc., on Sunday.

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[34] Davis, *Political Conventions of California*, p. 433, Res. 5.

[35] *Ibid.*, p. 439, Res. 5.

[36] *Ibid.*, p. 448, Res. 5.

[37] *Ibid.*, p. 452, Res. 1.

[38] Senate bill No. 1, and Assembly bill No. 5. Senate and Assembly Journals, 25th Sess.

[39] *Senate Journal*, 25th Sess., p. 60.

[40] *Sacramento Daily Record-Union*, January 22, 1883.

[41] *Ibid.*, January 24, 1883, p. 3.

But this action was reconsidered, and the original bill as it came from the Senate was passed by a vote of 47-21.[42]

It is surprising that the repeal of the Sunday laws met with so little opposition from the churches and labor organizations. While petitions were presented against their repeal, there was nothing like the universal interest that had defeated a similar movement in 1868. One preacher who attempted to arouse the church members to their defense said that he could not explain the general apathy on the subject.[43] This total abolition of all such restraints is particularly significant in view of the fact that, owing to some of the peculiar provisions of the State Constitution, it seems probable that no new laws can be enacted on this subject that will be upheld by the courts.

TRADE-UNION EFFORTS TO SECURE A DAY OF REST.

Since the repeal of the Sunday laws, the trade-unions have made two attempts to secure legislative protection for their day of rest. The bakers continued their struggle against the adverse conditions of their trade.[44] Through their efforts a law was passed in 1893 which provided that every person employed in any occupation should be entitled to one day's rest therefrom in seven, and made it unlawful for any employer of labor to cause his employee to work more than six days in seven.[45] This act has never been brought before the state Supreme Court, but in several Superior Court cases it has been declared unconstitutional.

In 1895 the barbers secured a law requiring barber shops to be closed at noon on Sunday. When brought before the Supreme Court the law was declared unconstitutional, principally on the ground that it was special legislation.[46]

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[42] *Statutes of California*, 1883, p. 1. *Sacramento Record-Union*, February 7, 1883, p. 2.

[43] *The Pacific*, February 7, 1883, p. 3.

[44] See report on Bake-shops, *Seventh Biennial Rept. of B. of L. S.* (1895-6), p. 127.

[45] *Statutes of California and Amendments to the Codes*, 1893 p. 54. "Sec. 1. Every person employed in any occupation or labor shall be entitled to one day's rest therefrom in seven; and it shall be unlawful for any employer of labor to cause his employees, or any of them, to work more than six days in seven; *provided, however*, that the provisions of this section shall not apply in any case of emergency.

"Sec. 2. For the purposes of this act, the term 'day's rest' shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time."

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[46] *Ex parte Jentzsch*, 112 Cal. 468, 473, 475. The court pointed out that in this state Sunday laws had never been upheld from a religious point of view. Ours was not a paternalistic government, and there was danger of carrying the police power too far. "We think the act under question gives plain evidence of such encroachment. It is sought to be upheld by the argument that it is a police regulation; that it seeks to protect labor against the oppression of capital. . . . It is a curious law for the protection of labor which punishes the laborer for working." The law was criticized because it did not apply to other classes, as street-car employees, or workers on a newspaper. "When any one class is singled out and put under the criminal ban of a law such as this, the law not only is special, unjust, and unreasonable in its operation, but it works an invasion of individual liberty, the liberty of free labor which it pretends to protect."

The Barbers' Sunday Law was repealed in 1905. (*Statutes of California and Amendments to the Codes*, 1905, p. 658.)

CHAPTER XIV.

EMPLOYMENT AGENCIES.

San Francisco has always been the great labor market of the Pacific Coast. In early days, before the opening of the transcontinental railroads, all the foreign immigrants and a large portion of the population from other states of the Union landed in San Francisco, from which point they were distributed to other sections of the state and of the West. Not only have the newcomers offered their services, but the unemployed of other localities have continually returned to this natural focusing point of the business interests of the state. The peculiar economic conditions of California have produced a large floating population. The great industries of the state do not furnish steady employment for the entire year. The mines, the grain fields, and the orchards all demand large accessions to their labor forces at certain seasons of the year. This unattached laboring population returns to the cities in periods of idleness to spend the money earned and seek new opportunities for work. As a result of these circumstances, the San Francisco employment agencies, or "intelligence offices" as they were called in early days, have flourished in business since the later fifties, and coincidently aroused bitter complaints among the workingmen.[1]

EARLY SAN FRANCISCO INTELLIGENCE OFFICES.

Employment offices were first established in San Francisco for the purpose of shipping sailors. During the period of the rush to the gold mines, large sums were often paid to keepers of sailors' boarding houses or employment agents for furnishing the men necessary to enable a vessel to sail, as it was almost impossible to obtain a crew at that port. This resulted in the development of all sorts of nefarious methods of obtaining seamen. It is claimed that the term "shanghai" originated in San Francisco at this time. An ordinance[2] was passed in 1853 requiring the shipping offices to be licensed, but no very vigorous efforts seem to have been made to correct the flagrant abuses charged to the unscrupulous agents.

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[1] In this chapter I shall confine myself almost entirely to the San Francisco offices, as most of the abuses and all of the legislation originated there. A good deal of attention has been given the subject in Sacramento and Los Angeles, where free employment agencies maintained at public expense have been established. For a full account of these experiments see Conner, J. E., *Free Public Employment Offices in the United States, Bulletin of the United States Bureau of Labor*, No. 68, January, 1907, pp. 6-10.

About 1860 there was a rapid increase of intelligence offices furnishing all sorts of land labor. These offices must have done quite a profitable business, as even after the passage of a law requiring the payment of a license fee of two hundred dollars a year they continued to multiply.[3] That these gains were often at the expense of their unfortunate patrons is evident from the testimony of the San Francisco Chief of Police, who declared that every day brought complaints from parties who had been swindled by being sent to distant parts of the state to seek employers who existed only in the imagination of the unprincipled intelligence-office keepers.[4]

ATTEMPTS TO REGULATE THE BUSINESS IN 1861.

At the request of the city authorities, the state legislature of 1861 passed a law for the regulation of the San Francisco intelligence offices.[5] The Board of Supervisors was authorized to issue them licenses, collecting fees of fifty dollars per quarter. The proprietors of these offices were required to keep a record in English of the business they transacted. When receiving a fee for a position furnished or information given, they must furnish a statement specifying the "amount received, on what account received, and what the Intelligence Office-Keeper agrees to do for, and on account of, said payment, with the date thereof, and to be signed by said Intelligence Office-Keeper with his signature." The penalty for failure to comply with these conditions was a fine of from fifty to five hundred dollars, and imprisonment from twenty to ninety days, or both such fine and imprisonment.

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[2] San Francisco Ordinances, 1853-4, No. 316.

[3] *Daily Alta Californian*, July 8, 1861.

[4] *San Francisco Municipal Reports*, 1861-2, p. 144.

[5] *Statutes of California*, 1861, p. 412.

The proprietor of the office was in turn protected by the provision making its patrons subject to a fine if they gave out information received at such office, or if they sent others to take positions in their stead, with intent to defraud the keeper of such intelligence office.[6]

Soon after the passage of this law the Board of Supervisors exercised the discretion allowed them by refusing a license to one Hall, who had been given a bad record by the chief of police. Hall at once applied for a mandamus compelling the issuance of the license, claiming that the first section of the law was unconstitutional in that it gave the Board an arbitrary power, as it was not required to issue the licenses to any but persons whom it considered qualified. The Supreme Court sustained the action of the Board by refusing to order the issuance of the mandamus.[7]

In his next report after the passage of this law the chief of police expressed himself as well satisfied with its effect, claiming that it had been the means of protecting many strangers and poor persons, and that there had been no serious charges of abuses since it had been enforced.[8] However, this improvement does not seem to have been a permanent one, as the swindling practices of the intelligence offices was one of the strongest arguments advanced in favor of the maintenance of the free employment bureau which was established in 1868.

THE CALIFORNIA LABOR EXCHANGE, 1868-1872.

In the period following the Civil War, many immigrants from older states, and also from European countries and Australia, landed in San Francisco. Unlike the early arrivals, who hastened to the gold mines, these newcomers had no definite destination, but were in search of employment or an opportunity to take up land. The labor forces supplied in this way tended to accumulate in San Francisco. There was great need of some means of distributing such persons to localities where their services would be in demand, and of giving information to prospective farmers about public land open for entry. Two organizations supported by the voluntary subscriptions of public-spirited citizens were formed to meet these needs. The Immigrants' Aid Society was short-lived, and seems to have accomplished very little,[9] but the California Labor Exchange succeeded in obtaining financial support from the city and state, and continued in operation for four years.[10]

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[6] *Statutes of California*, 1861, p. 412, Sec. 6.

[7] *Hall v. Supervisors of San Francisco*, 20 Cal. 591.

[8] Rept. of M. J. Burke, *San Francisco Municipal Reports*, 1861-2, p. 144.

The reports of the Labor Exchange, which the newspapers of the time publish quite fully, are valuable not merely because of the light they throw on the first California free employment bureau, but because of the information given about the wages and kinds of labor demanded at this time, and the character of the incoming population. The fluctuations in the demand for labor and the amount of wages offered also show plainly the transition from the unusual prosperity of 1868 to the depression and idleness of the seventies.

During the first year of the Labor Exchange there was a practically unlimited demand for laborers to work on public highways and railroads, on farms, and in the lumber camps and mines. Of the more skilled workers house carpenters and blacksmiths were called for most frequently. No positions could be found for clerks, book-keepers, or in other such light, indoor occupations. Between April 27, 1868, and July, 1869, 14,662 men and boys were given positions, and many orders remained unfilled for lack of applicants. Two-thirds of those seeking work had arrived in the state in 1868. The larger number of the applicants were able to find places near San Francisco; the orders from more inaccessible sections of the state and from Oregon and Nevada generally remained unfilled. About one-third of those applying for work were Irish; Americans from older states came next in numbers, then Germans, English, French, and other Europeans.[11]

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[9] *Bulletin*, October 6, 1869; *Alta*, June 20, July 11, 1868.

[10] From April, 1868, to April, 1872.

[11] Full reports of the work of the Labor Exchange can be found in the *Alta* of April 15, 23, May 9, 10, 12, 14, 15, 17, 23, 24, 28, 31, June 2, 5, 6, 9, 16, July 8, 11, 21, August 28, November 12, 22, December 4, 10, 1868.

The second and third annual reports of the Labor Exchange show a rapid decline in the number of men and boys furnished with positions.[12] That this was not entirely due to the business depression to which it was attributed seems evident from the fact that similar private enterprises, paying heavy license fees, and charging for services rendered, increased from seven in 1869 to thirteen in 1870.[13] The first secretary of the exchange, who seems to have been quite efficient and deeply interested in the work, was discharged because of a disagreement with the Board of Trustees in December, 1868, and his successor was evidently a man of less zeal and ability.[14]

The Labor Exchange commenced business with a list of 104 subscribers, which included a number of prominent business firms of the city. The first three months proved the public utility of the work, and seemed to justify an appeal to the city authorities for financial support. As the city attorney gave an opinion declaring that the supervisors had no right to appropriate money for such a purpose, a three thousand dollar bond was voted with the expectation that the expenditure would be authorized at the next meeting of the legislature.[15] Several wealthy men were found willing to advance money on this precarious security. The legislature meeting in 1869-1870 fulfilled these expectations, and also passed a bill making an appropriation for the exchange of $500 a month for two years.[16] At the end of this period the legislature refused to give further financial support, and the exchange passed into private hands in April, 1872.[17]

In reviewing the history of this first free employment agency, we find that during the initial year, when it was a new enterprise supported by volunteer subscribers, and managed by a secretary who seemed efficient and devoted, it was quite successful. It is probable that this success was also largely due to the fact that there was no lack of work, the orders far outnumbering the applicants. The opening of the free employment bureau evidently drove a number of private enterprises out of business, as the number of licenses issued to San Francisco offices in the year ending June 30, 1868, decreased from twenty-five to eighteen.[18] This decline was followed by a rapid increase in the following years. In October, 1869, the secretary of the exchange reported a falling off of fifty per cent. in the demand for men, though the orders for women were as numerous as before.[19] The reports show that chiefly unskilled labor, engaged largely on temporary work, was employed through this medium. The men were wanted for work on wagon roads and railroads, as harvest hands, or in lumber camps, and the women were sought for domestic service.

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[12] The numbers are: April 27, 1868, to July, 1869, 14,662; July, 1869, to July, 1870, 3,173; July, 1870, to July, 1871, 1,735. (*Alta*, July 2, 1869; July 8, 1870; July 7, 1871.)

[13] The San Francisco auditor reports 27 quarterly licenses in 1869 and 52 in 1870. The fee for these licenses was $50 per quarter.

[14] *Alta*, December 4, 10, 1868.

[15] *Ibid.*, June 16, July 21, 1868.

[16] *Statutes of California*, 1869-1870, 543.

[17] *Alta*, April 5, 1872.

FREQUENT CHANGES IN THE NUMBER AND PROPRIETORSHIP OF EMPLOYMENT AGENCIES.

An interval of over twenty-five years elapsed before another attempt was made to run a free public employment agency. The records of the San Francisco auditors and license collectors show great fluctuations in the numbers of licenses issued during this period. The fee was $50 a quarter until 1872, when the charge was lowered to $15 per quarter. The accompanying table shows the number of licenses and the amounts collected between 1862 and 1902:

Year	No.	Am't.	Year	No.	Am't.	Year	No.	Am't.
1862	24	$1,200	1875	86	$1,290	1890	61	$915
1863	25	1,250	1876	70	1,050	1891	67	1,005
1864	24	1,150	1877	52	780	1892	75	1,125
1865	19	950	1878	39	585	1893	82	1,230
1866	21	1,150	1879	31	465	1894	92	1,380
1867	25	1,350	1880	35	525	1895	80	1,200
1868	18	900	1883	53	795	1896	92	1,380
1869	27	1,350	1884	58	870	1897	94	1,410
1870	52	2,300	1885	64	960	1898	100	1,500
1871	36	1,800	1886	69	1,035	1899	82	1,230
1872	41	1,560	1887	65	975	1900	97	1,507
1873	68	1,020	1888	53	795	1901	128	2,048
1874	73	1,095	1889	63	945	1902	131	2,096

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[18] These were quarterly licenses, so there were from four to six private offices in operation. The license statistics are taken from the San Francisco Municipal Reports, 1862-1902.

[19] *Bulletin*, October 6, 1869.

The earlier reports do not show the variations in the proprietorship of these offices, but this information is given in the Police Reports of 1904-5. If these years are typical of the preceding ones, then a very high percentage of the enterprises of this kind are extremely short-lived. In June, 1903, there were thirty licensed offices. During the succeeding year sixteen retired from business and two had their licenses revoked; but during the same period twenty-five new offices were opened, so that in June, 1904, there were thirty-seven places in operation. In the following year fourteen retired from business, and four had their licenses revoked, while thirty-four new offices were opened, leaving a net gain of fifteen. It is probable that this continuous shifting of the proprietorship of these offices has helped make possible many of the abuses that have been characteristic of the business.

EFFORTS TO CORRECT THE ABUSES OF THE EMPLOYMENT AGENCIES, 1890.

Beginning about 1890, the labor organizations, assisted by the State Labor Commissioner, have waged almost continuous warfare against the abuses of the employment agencies. The complaints are no longer confined to San Francisco; Los Angeles, Sacramento, and Stockton have developed evils similar to those which have given rise to such bitter criticism of the San Francisco agencies. As the same evils have been continually recurring in all the different agencies, we will give a summary of the chief causes of dissatisfaction, and then outline the attempts to secure legislation regulating the business.

The investigation before the Senate and Assembly committees in 1891, the Reports of the State Labor Commissioners,[29] and the articles in the labor papers show the following causes of complaint against the employment agencies:

(1) Accepting a registration fee for which no services are rendered.

(2) Extortionate charges for positions furnished.

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[29] *Seventh Biennial Report, Bureau of Labor Statistics.* See also the *Fifth, Ninth, Tenth,* and *Twelfth Biennial Reports.* The evidence taken before the committees in 1891 was published in the *Appendix to the Journals,* 29th Sess., Vol. 7, Doc. 8.

(3) Refusal to return fees where no positions are furnished.

(4) Sending men to distant places to take fictitious positions.

(5) Collusion between foremen or employers, and the employment agent, who divide the profits from fees paid for a few days' employment.

(6) Misrepresenting the conditions of employment.

(7) Furnishing strike-breakers.

(1) The better class of unorganized workers are generally the victim of the first abuse. Book-keepers, clerks, and teachers have frequently been fleeced by the registration system. Attractive advertisements are put in the papers or sent through the mails, and large numbers of persons are induced to pay a fee for the privilege of registering, and waiting for notice of a possible position. A few of those registering are informed of openings, but usually a very high percentage get no return for the fee. Sometimes other devices are added to increase the amount of money extorted, as when the "Business Women's Club" required the purchase of stock as a prerequisite to obtaining a position, or when extra charges are made for printing the name and address of the applicant in a "Reference Book," for circulation among possible employers.[21]

(2) Extortionate charges seem to have been a continuous and common form of imposition. Commissioner Fitzgerald, who made a thorough investigation of the abuses connected with this business, declared, "The positions are sold for all they will bring. If it is laboring work at $1 per day, $1 to $2 is charged. If lighter employment, from $15 to $50 a month, from $1 to any amount obtainable; if for a higher class of employment, the sale of the positions then assumes the shape of an auction and is sold to the highest bidder, and in instances has brought as high as $100."[22]

(3) Prior to the state legislation regulating employment agencies, the San Francisco Supervisors attempted to remedy this evil of retaining the fees when no position was furnished. They passed an ordinance which prescribed a form of receipt

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[21] *Ninth Biennial Report, Bureau of Labor Statistics*, p. 74-5. See also the *Twelfth Biennial Report*, p. 182.

[22] *Seventh Biennial Report, Bureau of Labor Statistics*, pp. 54, 62.

required of all employment agents. This stated the amount paid, the position which the information given was expected to secure, the wages offered in the position, and also the following agreement which was signed by the agent: "Failing to do which we promise to refund the said sum —— on return of this receipt within two days, together with a written statement from the employer that the applicant could not get the situation. But the undersigned do not hold themselves responsible for any expenses incurred by the said —— should he fail to obtain the situation above stated unless the information given —— at this office upon which he acted and applied for said situation should have been found to have been incorrect." In cases where the situation sought was outside of San Francisco, ten days, instead of two weeks, were allowed for the return of the receipt.[23]

But this failed to remedy the matter, as the agents frequently refused to return the fees on presentation of the receipt, and when foremen were in alliance with the employment agent they would retain the receipt, or would not certify to the failure to obtain work. Commissioner Fitzgerald collected 458 of these fees amounting to $1040 in one year,[24] and other commissioners testify to frequent complaints of violation of this law.[25]

(4) In 1861 the San Francisco Chief of Police found himself distressed by the daily complaints from poor strangers who had spent their last dollar in pursuit of fictitious positions offered by swindling intelligence offices, and the last report of the Labor Commissioner assures us that "Cases in abundance have been brought to the attention of this office where innocent workmen have been sent even as far as Arizona and Nevada in search of jobs that never existed."[26] Apparently the employment agents hope that their victims will be unable to return from these distant places to make known their wrongs,—or at least that they

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[23] Resolution 3640 (3d Series), passed in 1890. Re-enacted December 1, 1904. Ordinance No. 1336, p. 660, *Ordinances of the City and County of San Francisco.*

[24] *Seventh Biennial Report, Bureau of Labor Statistics*, p. 55.

[25] *Ninth Biennial Report, Bureau of Labor Statistics*, p. 73.

[26] *Twelfth Biennial Report, Bureau of Labor Statistics*, p. 182. *Organized Labor*, February 14, 1903, p. 3. See also the testimony of Alexander and Smith in *Appendix to Journals*, 29th Sess., Vol. 7, Doc. 8, where sixty men were sent to Oregon. For cases in southern California, see the account in the *Chronicle* of June 12, 1908.

cannot get back before the agents have fleeced a goodly number and retired from the business.

(5) It is difficult to prove conclusively secret agreements between the employers and the intelligence-office keepers, but the investigation of the committees of the legislature and also the reports of the Labor Bureau show that the workingmen have believed this to be one of the most flagrant and common forms of the abuses charged to this disreputable business. Of course an agreement to employ only men sent by a particular firm implies some division of fees between the employer and the agent.[27] When both parties are interested in the accumulation of fees, it is inevitable that the unscrupulous employers or foremen will find occasions for frequent changes in their working force. The testimony of the victims of these disgraceful bargains shows that, in many instances, men were sent to distant places, only to be discharged without apparent cause after a few days' work. In some cases, they did not earn enough to cover their expenses. In one instance it was claimed that the foreman's share of the spoils amounted to sixty dollars per month.[28]

(6) We are hardly surprised to find that, in addition to his other crimes, the employment agent is charged with a wholesale misrepresentation of the conditions of employment in the positions which he offers. It is to be expected that the advantages of the opportunities for employment offered would be exaggerated in order to induce men to take them and pay the fees, but the form of misrepresentation which has aroused the wrath of organized labor is that which has resulted in men coming from the East to take the places of strikers, under assurances that there were no labor difficulties connected with the employment offered. This has led to the custom of sending out the warning "stay-away" letters and circulars from the unions involved and from the Labor Council, whenever a strike is in progress.

(7) The employment agencies have sometimes furnished a ready means of supplying strike-breakers in times of industrial

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[27] See affidavit of Murray, *Seventh Biennial Report, Bureau of Labor Statistics*, p. 66. Also pp. 57-64.

[28] Evidence on Employment Agencies, *Appendix to Journals*, 29th Sess., Vol. 7, Doc. 8.

warfare.[29] But for this conflict with the powerful forces of organized labor, it is probable that the dishonest employment agent might have continued to ply his trade with much greater impunity. His victims are rarely found among the more skilled workers, as these depend on the employment offices that are conducted as a part of the regular activities of their unions. Such workers resort to the public offices only in times of great depression in their trades, when they are forced to fall back into the class of common laborers. The usual patrons of the employment offices are the farm hands and common laborers who do the seasonal and other forms of temporary work.[30] These classes are generally too poor and friendless to defend themselves.

The second[31] active campaign against the evils of the employment agencies in 1890-1 bore fruit in the San Francisco ordinance[32] regulating the business, but failed to secure the state legislation proposed. We have been unable to find a copy of the bill presented at this time, but it is probable that it embodied the recommendations of the Labor Commissioner contained in his report for 1891-2. He proposed that free employment agencies under the supervision of the Bureau of Labor Statistics should be established in all cities within the State having a population of more than 25,000. He maintained that "This Bureau would serve as a sort of clearing house, where the wants of all classes, employers and employees, in all parts of the state, reported through the different offices, could be compared, and the balances of supply and demand between the various labor districts of the state could be adjusted."[33]

The plan for conducting this business under the supervision of the State Labor Bureau was not carried out until 1895-6, when Commissioner Fitzgerald undertook to demonstrate the usefulness of such an enterprise by establishing a free employment agency in connection with his San Francisco office, using only his regular appropriation and about a thousand dollars collected from business men interested in the undertaking. He was able to find positions for 5,800 of the 18,920 persons who applied to him for work. In his report of the experiment he declared that "The result of the work shows the absolute need of its enlargement to the different labor centers of the State, and I sincerely hope that the wisdom of the Legislature will provide for the establishment of different offices with sufficient appropriation to prove their efficiency."[34]

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[29] *Organized Labor*, August 13, 1904; June 30, 1900.

[30] This is shown not only in the statistics of the California Labor Exchange already cited, but also in the Reports of the Labor Bureau. See "Employment Agencies" in the *Ninth* and *Twelfth Biennial Reports of the Bureau of Labor Statistics.*

[31] The first was that of 1861.

[32] Resolution 3640 (3d Series), quoted on p. 343.

[33] *Fifth Biennial Report, Bureau of Labor Statistics*, 1891-2, p. 12.

The next Labor Commissioner was not in sympathy with the plan by which the Bureau would be turned into a vast free employment agency. He argued that such an agency never created work for the unemployed, and that being free made it attractive to the shiftless and unreliable, who would not be careful in fulfilling engagements for which they had paid no fee. Since the income of those in charge did not depend on its success, they would be apt to lack in zeal, so that the state office would be less efficient than the private enterprises.[35]

In his second biennial message, Governor Gage returned to this plan of establishing a free employment office under the supervision of the State Bureau of Labor Statistics. He thought that the Bureau should be made of more practical benefit to the laboring people, and that stringent provisions could be inserted in the law that would insure the Labor Commissioner and his assistants discharging their duties with appropriate energy.[36] But the legislature has continued to ignore all pleas for an appropriation for this purpose. To establish offices in a number of the cities of the state would require a large expenditure of the public money, and the past history of the Labor Bureau justifies a doubt as to whether it would discharge these extended duties with sufficient ability to insure a fair return for the money expended.

The labor organizations have turned their attention to the regulation of the private agencies, rather than to securing a free state administration of the business. Among the numerous labor measures which became laws in 1903 were two bills for the regulation of the employment agencies. The Law and Legislative Committee of the San Francisco Labor Council seems to have given this subject careful study, for as early as March, 1902, progress was reported on the employment agency bill. The laws enacted at this time, if fully enforced, would check many of the abuses complained of in the past.[37]

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[34] *Seventh Biennial Report, Bureau of Labor Statistics*, p. 8.

[35] *Ninth Biennial Report, Bureau of Labor Statistics*, p. 73.

[36] Second Biennial Message, January 5, 1903, *Appendix to Journals*, 35th Sess., Vol. 1.

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[37] *Statutes of California*, 1903, pp. 14-6. "Sec. 1. Any person, firm, corporation, or association pursuing for profit the business of furnishing directly, or indirectly, to persons seeking employment, information enabling or tending to enable such person to secure such employment, or registering for any fee, charge, or commission the names of any person seeking employment as aforesaid, shall be deemed to be an employment agent within the meaning of this act.

"Sec. 2. It shall be unlawful for an employment agent in the State of California to receive, directly or indirectly, any money or other valuable consideration from any person seeking employment, for any information or assistance furnished or to be furnished by said agent to such person, enabling or tending to enable said person to secure such employment, prior to the time at which said information or assistance is actually thus furnished.

Sec. 3. [Amended by the Act of 1905.] It shall be unlawful for an employment agent in the State of California to retain, directly or indirectly, any money or other valuable consideration received for any registration made or for information or assistance such as is described in Section two hereof, if the person for whom such registration is made or to whom such information or assistance is furnished fails, through no neglect or laches of his own, to secure the employment regarding which registration such information or assistance is furnished, and said money or consideration shall be by said agent forthwith returned to the payor of the same, upon demand therefor, by the latter or his agent.

Sec. 4. [Declared unconstitutional in *Ex parte Dickey*, 144 Cal. 234, and repealed by the Act of 1905.] It shall be unlawful for an employment agent in the State of California to receive, directly or indirectly, for registration made or for information or assistance such as is described in section two hereof, any money or other consideration which is in value in excess of ten per cent. of the amount earned, or prospectively to be earned, by the person for whom such registration is made or to whom such information is furnished, through the medium of the employment regarding which such registration, information, or assistance is given, during the first month of such employment; *provided* that said value shall not be in excess of ten per cent. of the amount actually prospectively to be earned in such employment when it is mutually understood by the agent and person in this section mentioned, at the time when said information or assistance is furnished, that said employment is to be for a period of less than one month."

Sec. 5. (Tax collector to furnish list of agencies to Labor Commissioner.)

Sec. 6. (Written records to be kept showing: (1) Name of applicant. (2) Name of person furnishing the information. (3) Amount of cash received for the information. (4) Names of persons failing to secure positions and reasons therefor. (5) Names of persons receiving return cash. (6) Amount of money returned.)

Sec. 7. (The records to be open to the Labor Commissioner.)

Sec. 8. (Penalties.)

The first of these laws begins by defining employment agencies in such a way as to make the law applicable to all registration offices or similar establishments charging fees for assistance in obtaining employment. Sections 2 and 3 provide that no fees can be collected prior to the time that the information of a possible position is actually furnished, and require the return of fees in cases where no employment is obtained. The fourth section of the law, which has since been declared unconstitutional, provided that the fee should not exceed ten per cent. of the first month's pay, or, when the employment is for a shorter period, ten per cent. of the prospective amount actually earned. The tax-collectors are required to furnish the Labor Commissioner with lists of all agencies receiving licenses, in order to enable him to inspect the careful records which the law requires them to keep. Violations of the law are punishable by a fine of not more than $500, or imprisonment not to exceed six months, or by both such fine and imprisonment.

The second law affecting this business, passed in 1903, declares it unlawful for any person, partnership, company, corporation, or organization of any kind to induce persons to come to the state, or move from one part of it to another, in search of employment, by misrepresenting the conditions of work, particularly in matters relating to labor disputes. The penalties for such misrepresentation are much more severe than those for the violation of the previously reviewed employment agency law; the fine may amount to $2000 and the imprisonment to one year, or both may be imposed.[33]

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[33] "It shall be unlawful for any person, partnership, company, corporation, association, or organization of any kind, doing business in this State directly or through any agent or attorney, to induce, influence, persuade, or engage any person to change from one place to another in this State or to change from any place in any state, territory, or country to any place in this State, to work in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning the kind or character of the work, the compensation therefor, the sanitary conditions relating to or surrounding it, or the existence or non-existence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer or employers and the persons then or last theretofore engaged in the performance of the labor for which the employee is sought." (*Statutes of California*, 1903 pp. 269-270.)

When the employment agency law was amended in 1905, a part of this act was substituted for the provisions that had been declared unconstitutional in Sec. 3 of that law.

Several changes were made in the employment agency law by the 1905 session of the legislature. The section of the law which sought to limit the fee charged for assistance in securing a position to ten per cent. of the first month's wages, or of the amount actually earned, was declared unconstitutional because of its undue interference with the freedom of contract. The court maintained that such a restriction could not be defended on the ground that it was an exercise of police power, as this power can only be used for the preservation of the public health, safety, or morals. It was claimed that the business in question was one beneficial to the public, and that there was no more reason for regulating the prices charged for such services than in any other legitimate occupation.[59] Section 4 of the act in question arbitrarily deprived the employment agent of his right of contract and circumscribed him in the pursuit of his livelihood by a law not applicable to his fellow-men in other occupations, and was therefore unconstitutional.

Section 3 of the law was also amended. Instead of requiring the return of the fee in all cases where the person fails to secure the position, the provision making it unlawful to misrepresent the conditions of employment was inserted. The return of the fee, and also the payment of the expenses incurred in seeking the position is required, when the information given is at variance with the facts.[60]

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[59] "And where, it may be asked, could the line be drawn, if the Legislature, under guise of the exercise of the police power, should thus be permitted to encroach upon the rights of one class of citizens? Why should not the butcher and the baker dealing in the necessaries of life be restricted in their right of contract, and, consequently, in their profits, to ten, five, or one per cent.? Why should not the contractor, the merchant, the professional man, be likewise subjected to such paternal laws and why might not the Legislature fix the price and value of the services of labor?" (*Ex parte Dickey*, 144 Cal. 238-9.)

[60] "Sec. 3. It shall be unlawful for any employment agent in the State of California, to induce, influence, persuade, or engage any person to change from one place to another in this state, or to change from any place in any state, territory, or country, to any place in this State to work in any branch of labor, through or by means of any representations whatsoever, whether spoken, written, or advertised in printed form, unless such employment agent shall have assured himself beyond a reasonable doubt that such representations are true and cover all material facts affecting the employment in question. Whenever such representation, whereby any person is induced, influenced, persuaded, or engaged to change from one place to another in this State, or from any place in any state, territory, or country, to any place in this State to work in any

If these laws were strictly enforced, they would correct some of the more flagrant evils of the employment agencies. But the class who suffer most from their abuses are generally poor and ignorant,—often friendless strangers. Only much greater care in issuing the licenses and a more systematic inspection of the business will prevent unscrupulous agents from continuing to take every possible advantage of their helplessness.[41]

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branch of labor, shall prove to be in any material degree at variance with, or short of the truth, the employment agent responsible for such representations shall immediately return to any person who shall have been influenced by such representations, any and all fees paid by such person to said employment agent on the strength of such representations, together with an amount of money sufficient to cover all expenses incurred by such person influenced by such representations in going to and returning from any place he shall have been influenced by such representations to visit in the hope of such employment." (*Statutes of California*, 1905, pp. 143-4.)

[41] An attempt is being made at the present (1909) session of the legislature to amend the law so that these conditions will be fulfilled. The bill requires a stricter examination of those applying for licenses, and a more thorough inspection of the business.

CHAPTER XV.

LAWS FOR REGULATION OF CONVICT LABOR.

The problems connected with the employment of the convicts of the state have, from the outset, been peculiarly difficult of solution in California. Owing to the situation, the attractions of the climate, and other more complex causes, the percentage of the criminal population has been higher than in other parts of the country, thus imposing an unusually heavy burden upon the taxpayers. At the same time, there has been from early days a most persistent and vigorous opposition to the profitable employment of prison labor in manufacturing industries. Until recent years the comparative isolation of the state has limited the market for her manufactured goods, so that any competition was quickly felt and its effects jealously watched. The manufacturing interests have centered about San Francisco, where the menace of Chinese labor led, at any early date, to organized efforts in defense of the good working conditions that have generally been characteristic of the state. To find steady and profitable employment for a large number of convicts, without in any way coming into competition with the free wage-workers of the state, has been a most difficult undertaking.

THE LEASING SYSTEM.

The first plan adopted for the regulation of the state prison had nothing to recommend it but its cheapness. The whole responsibility of caring for the prisoners, and finding them employment was turned over to lessees. Two men, M. G. Vallejo and J. M. Estell, undertook to guard and maintain the convicts of the state without other compensation than what they hoped to make from their labor.[1] Vallejo quickly realized that he had made a bad bargain, and hastened to secure his release,[2] but Estell took over the ten-year contract and persisted in his efforts to make money out of the care of the convicts of the state. By the original agreement, Vallejo also undertook to furnish money for the prison building.[2a] After his withdrawal,[3] bonds were issued for the amount needed to erect buildings. In the meantime, the prisoners were confined in the county jails, or the "prison brig," one of the many abandoned vessels in San Francisco Bay which had been equipped for their safe-keeping.

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[1] *Statutes of California*, 1851, pp. 427-8.

[2] *Ibid.*, 1852, p. 157.

As might be expected, this plan under which the state sought to shirk its responsibilities for the management of the state prison, worked very badly. Estell claimed that his contract permitted him to employ the convicts wherever, and at whatever labor he found profitable.[4] The prisoners were worked in large gangs away from the prison grounds. Some of them were sent out without guards to serve as domestic servants, or to work on ranches. The "trusties" went on errands either with or without their guards. Of course many of the prisoners escaped. It is evident that the privations of their prison life would tempt them to take desperate chances in order to regain their freedom. While the Prison Inspectors were not explicit in their report of conditions, the distressing details that must have called forth their general remarks are easily imagined. They declared, "The state prison of California, as it now exists, is no paradise for scoundrels. It is a real penitentiary—a place of suffering and expiation. Of work there is abundance, with privations and corporal punishment."

This early period when the state prison was managed by a lessee was interrupted by a brief and disastrous interval of full state control. Estell had not found his contract profitable and relinquished it in 1855.[5] Up to this time the state prison had cost the public nothing but the salary of a few officials appointed for inspection, but now over $55,000 a month was required for its maintenance. In addition to a warden and a complete list of assistants, three directors at a salary of $3500 each were appointed.[6] The latter were to reside at the prison and have a general oversight—if we may judge by the results—of the looting of the public treasury. This was the period when it was felt that nothing short of a vigilance committee could purify the political corruption of San Francisco. Unfortunately this committee did not extend its operations to the state administration. The officials of the state prison were second to none in their ability to make away with the public funds. During the seven months of state control, $388,278 was spent for the maintenance of the prison. The wall was erected, not by prison labor, but by contractors who collected over $65,000 more than was due for a most unsatisfactory piece of work.[7] The prisoners were employed chiefly in making bricks, but even this occupation proved a source of graft, for under the able management of the directors it required $17,168 worth of wood to burn $20,000 worth of bricks.

[2a] *Statutes of California*, 1851, p. 540.

[3] *Ibid.*, 1852, pp. 132-4; 1853, pp. 155-158.

[4] Report of Prison Inspectors, *Appendix to Senate Journal*, 1855. Report of committee relative to the condition and management of the state prison, *Appendix to Senate Journal*, 6th Sess., 1855.

[5] Correspondence between Governor Bigler and Estell, *Assembly Journal*, 7th Sess. (1856), pp. 46-51.

The committee that reported these facts recommended a return to the leasing system. The legislature hastily authorized the Lieutenant Governor, Controller, and Treasurer to act as a Board of Commissioners to lease the state prison grounds and property for five years, the lessee to erect additional buildings, and bear all expenses, including those of the recapture of escaped convicts.[8] Estell was able to renew his contract with a promise of $120,000 a year of state funds, to be paid in monthly installments of $10,000 each.[9] It was agreed that he should "be at full liberty to work said prison convicts at any and all mechanical branches of business that he may choose, provided that the said convicts shall not be employed in any kind or description of labor that shall greatly endanger their lives, health, limbs, or safe-keeping."[10]

Under this new arrangement the prisoners were employed chiefly in improving the prison grounds and in making brick.[11] But the contractor was anxious to find more profitable occupation for his charges, and his advertisements offering contractors the labor of the many skilled mechanics[12] that he declared were to be found among the five hundred prisoners, soon led to the establishment of more varied prison industries, and also called forth the first protest against the competition between convict and free labor.

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[6] *Statutes of California*, 1855, p. 292-6.

[7] Report of Committee, *Appendix to Senate Journal*, 7th Sess., 1856.

[8] *Statutes of California*, 1856, pp. 48-9.

[9] Report of Committee on State Prison (*Appendix to Assembly Journal*, 1857).

[10] Supplementary agreement to contract of March 26, 1856 (*Alta*, February 3, 1858).

An article presented before the Mechanics' Institute in February, 1857, attacked the California state prison system as "a blight upon the mechanical labor of the state." The writer claimed that the manufacture of hats, furniture, casks, and stone-work for buildings was already or soon would be absorbed or greatly injured by convict labor, and that the immigration of a desirable class of free mechanics was being greatly retarded by this threatened competition of the large number of prison laborers in the state. He pointed out that the support of the prisoners, whose labor was being utilized for private gain, to the detriment of the free mechanics, was costing the public $120,000 a year, or $240 for each convict. It was suggested that the prison labor should be utilized to improve the rivers and tule lands, and that the profits of such labor be given to the convicts.[13] The mechanics of the state were urged to make a vigorous organized protest against the growing menace.

A year later we find a correspondent of the San Francisco *Bulletin* arguing that the labor of the convicts should be confined within certain well-defined limits. He claimed that, though this labor was limited in amount, it could be brought to bear against any one who demonstrated by experiment that a particular manufacturing business could be carried on successfully in the state. He declared that, to his certain knowledge, the fear of this competition had retarded the establishment of many manufacturing enterprises.[14]

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[11] Report of Committee, February 25, 1857 (*Appendix to Assembly Journal*, 1857). The convicts made 7,000,000 bricks during the year.

[12] Quoted in the article in the *Daily California Chronicle*, February 14, 1857.

[13] There are several references to this article in the newspapers of the time, but none of them gives the author's name. See *Daily California Chronicle*, February 14, 1857.

[14] *Bulletin*, February 2, 1858.

The administration of the state prison was attacked at this time not only because of this growing competition with the free laborers of the state, but also because it was so badly managed that the people living in its vicinity were in constant fear of an outbreak of desperate criminals. The newspaper articles and the complaints from the neighborhood led to the appointment of a joint committee of investigation by the state legislature. On making an unexpected visit to San Quentin, this committee found a most deplorable state of affairs.[15] The greater profits of the new contract had not secured a more humane treatment of the prisoners. One hundred and twenty of the prisoners were barefooted, and others had sought to protect themselves from the cold by tying pieces of sacks or blankets about their feet. The bedding was filthy and quite insufficient, and the food so bad that the hogs actually declined to eat it. At night young[16] and old were crowded into the large dormitory or inadequate cells, with a resulting immorality that was indescribable. Ninety-four prisoners had escaped during the previous year.

The special committee appointed to recommend action on this report declared Estell's contract forfeited, and presented a bill which required the Governor to take immediate possession of the state prison, and make suitable provisions for its administration. This bill was passed by a unanimous vote with record-breaking speed.[17] Governor Johnson hastened to execute the order, and succeeded in obtaining forcible possession of the prison keys and seal twenty minutes before the arrival of a restraining injunction.[18]

A new plan for the government of the prison was now devised. The extravagant and corrupt board of prison directors had been abolished.[19] The Governor, Lieutenant Governor, and Secretary of State were appointed prison directors.[20] Under the new regime the condition of the prisoners was greatly improved, and they were employed chiefly in improving the prison grounds and in making bricks. But Estell, who had carried his case to the courts, regained control of the prison, and he and his heirs or agents held it until the expiration of the term of his contract in 1861.[21]

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[15] The committee report is published in the *Appendix to the Assembly Journal* of 1858, and also in the daily papers of February 2-4. (See *Alta* and *Bulletin*.)

[16] At this time there were 82 boys under 21 confined at San Quentin. Boys who arrived at the prison in knee breeches were confined with hardened criminals from all parts of the world.

[17] *Statutes of California*, 1858, p. 32.

[18] *Bulletin*, February 26, 1858.

[19] *Statutes of California*, 1857, p. 74.

[20] *Ibid.*, 1858, p. 259.

THE CONTRACT SYSTEM OF PRISON LABOR.

From 1861 to 1880 the state prison was under the control of Boards of Directors made up of the chief state officials, the Governor or Lieutenant Governor acting as chairman. The members of the board were allowed a moderate additional compensation for their work in administering prison affairs. The chief disadvantage of this system was the fact that the directors were continually changing, thus preventing any continuity of policy in the management of the prison. It was even possible for an incoming board to repudiate the contracts of their predecessors.[22]

The labor of the prisoners was either utilized in the improvement of the prison property, or sold to contractors who employed it in various manufacturing industries. With the exception of the brick-making, all of these industries were carried on in shops built within the prison walls, thus lessening the difficulties of guarding the convicts. The contractors were allowed the use of shops and store-rooms rent free, but installed their own machinery and paid the foreman who instructed and superintended the prisoners while in the shops. The prices paid for the labor of the prisoners ranged from 30 to 75 cents per day. The maximum price of 75 cents was paid for selected skilled mechanics by a contractor in 1861. The usual prices were 40 to 50 cents a day for the more capable workers, and 30 cents for those who were less desirable. Attempts to raise the amount paid, or to enforce the uniform 50 cents charge always resulted in the withdrawal of the contractors, and the enforced idleness of a large percentage of the prisoners.[23]

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[21] *Statutes of California*, 1860, pp. 249, 348.

[22] Report of the Resident Director (*Appendix to Journals of the Senate and Assembly*, 18th Sess., 1st Vol.).

[23] Report of the Resident Director (*Appendix to Journals*, 18th Sess., Vol. I). Report of the Board of Directors (*Appendix to Journals*, 23rd Sess., Vol. I, Doc. 11, p. 17).

Every stage in the early development of the manufactures of the state was reflected in the work-shops of San Quentin. While brick-making was the most continuous and profitable of the industries carried on under the contract system, there were many other attempts at a profitable utilization of convict labor. The making of hats and clothing, boots and shoes, coopering, foundry and blacksmith work, the making of agricultural implements and wagons, the tanning of leather, and its manufacture into saddles and harness, the making of furniture, sashes and doors, were all, at one time or another, carried on in the prison work-shops. The making of furniture, sashes and doors, and the leather work seemed best adapted to the profitable employment of the prisoners.

EARLY EFFORTS TO SECURE LEGISLATION PREVENTING THE COMPETITION OF CONVICT AND FREE LABOR.

This extensive development of prison industries took place notwithstanding repeated vigorous protests from the free mechanics of the state. The cigar makers were among the first to suffer both from the competition of the Chinese and of prison labor. They seem to have been back of the attempt made in 1862 to pass a bill restricting the convict labor [illegible] certain occupations. It was declared that the mechanics of the state only asked for some such restriction, so that it would be possible to choose a business "free from this state prison curse."[24] In the debate it was charged that the author was not disinterested, as the profits of his business were imperiled by the fact that several hundred prisoners were then engaged in making cigars. At this time the members of the legislature were not at all in sympathy with such protective legislation. One opponent of the bill characterized, "the hobby of all this anti-state prison and anti-cooley talk for the benefit of free white labor," as a "magnificent humbug."[25] The author of the bill was unable to obtain a reconsideration of the vote indefinitely postponing the measure.

A somewhat different method of dealing with the problem was proposed in 1866. A bill was introduced prohibiting the employment of convicts in the manufacture of clothing, harness, cabinet-ware, cutlery, tin, glass, leather, or iron, or in any mechanical trade, art, or business, a knowledge of which is usually acquired by apprenticeship, except in the production of manufactured articles for the use of the convicts.[26] On the recommendation of the state prison committee to which it was referred, the bill was indefinitely postponed.

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[24] Senate bill 79,361 (*Journal of Senate*, 1862).

[25] Debate on Prison Labor, *Sacramento Daily Union*, April 24, 1862.

In 1867 the Workingmen's Convention continued the agitation on the subject of the evils of competition with convict labor. While the eight-hour law, Chinese exclusion, and the mechanics' lien law were given priority in their resolutions advocating labor legislation, they did not neglect to add a section declaring,[27] "That the present system of farming out the labor of state prison convicts in mechanical occupations, works great injury to parties engaged in legitimate trades, while the state derives but little benefit from the system, and we earnestly recommend a revision of the existing laws relating to convict labor."

When the workingmen sought to discover causes to which they could charge the enforced idleness, lowering of wages, and universal suffering of the seventies, the competition of Chinese and convict labor seemed the most obvious local factors contributing to the depression. In 1873, after the great crowds of unemployed men had collected in San Francisco and had begun holding their meetings on the sand lots, a vigorous effort was made to prevent the lowering of wages and prices through the competition of the cheap convict labor. Furniture making was one of the chief industries carried on in the state prison at this time, and the Cabinet Makers' Protective Union took the initiative in this new effort to restrict the competition with prison labor. After holding a mass meeting to arouse public sentiment, the matter of devising suitable legislation was turned over to the Mechanics' State Council.[28]

The Committee on Prison Labor of the Council prepared a report, which was presented to the state legislature, suggesting another solution of the vexed question. It was recommended that the prisoners be allowed to work only in the trades monopolized by Chinese labor. The making of doors, blinds, sashes, cigars, cigar-boxes, coarse clothing, carpets, and heavy bagging were enumerated as suitable occupations. These mechanics were convinced that, with proper management, the state prison could be made self-supporting.[29]

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[26] Letter from Sacramento, *Alta*, February 24, 1866.

[27] *Bulletin*, April 3, 1867; *Alta*, June 2, 1867.

[28] *Alta*, September 30, 1873.

A number of bills dealing with the subject were presented to the state legislature in 1873-4. One of these which provided that no contract should be made for less than $1.50 a day for skilled and 50 cents for unskilled convict labor passed both Assembly and Senate. This bill also authorized the officers of the prison to manufacture articles which could be sold for the benefit of the state.[30] Governor Booth vetoed the bill; his reasons for doing so are made evident in the following extract from his message: "The employment of convict labor by contract has been the subject of just criticism. There is no choice between this and idleness, until the prison is placed under the control of a permanent board by whom the business of the institution could be managed upon a policy fixed for a longer term than four years. The price paid by contractors of convict labor—40 cents per day inside the wall—seems to be much under its value, but no administration has been able to get more. The last advanced the price to 50 cents, but were compelled to recede to 40, or allow the prisoners to be unemployed."[31]

This subject of the competition between convict and free labor often found a place in the bitter harangues of the sand-lot meetings of 1877-8. The suffering unemployed were reminded that only in the state prison could they be sure of regular occupation and maintenance. This was one of the wrongs which the representatives of the Workingmen's Party elected to the Constitutional Convention of 1878 were expected to remedy.

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[29] Report of Committee on Prison Labor, *Appendix to Journals*, 20th Sess., Vol. VI, Doc. 6.

[30] Assembly bill, No. 246. *Alta*, March 19, 29; *Call*, March 19, 1874.

[31] Message of Governor Booth, *Senate Journal*, 1873-4, p. 75.

CHANGES OF POLICY INAUGURATED BY THE NEW CONSTITUTION.

The provisions adopted in the new Constitution which the legislature embodied in the statute of 1880, contemplated a complete change in the prison system. The article of the Constitution dealing with this subject was prepared by Governor Haight with the intention of presenting it to the convention. On his death, it was left with the Prison Commissioners, whose secretary forwarded it to the convention, where it was adopted without alteration.[32] Instead of the temporary board of directors, composed of state officials, the new plan provided for a board of five members who were to be appointed by the Governor with the advice and consent of the Senate. The members were to serve ten years, but were classified so that one member would retire every two years, thus securing greater continuity in the policy of the board.[33] The Prison Commissioners receive no compensation other than their reasonable traveling expenses. It was hoped that this provision would insure the appointment of members who had a disinterested desire to improve the administration of the prisons.

The Constitution[34] and the statute of 1880[35] also met fully the wishes of the workingmen of the state in the matter of the restriction of convict labor so that there would be no competition with the free wage-workers of the state. After the first of January, 1882, the labor of the convicts was not to be let out by contract, but was to be employed for the benefit of the state. This involved a complete change of policy in the management of the labor of the convicts. Before taking up the history of the period of state control of the prison industries, we will sum up some of the advantages and disadvantages of the contract system.

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[32] Debates and Proceedings of the Constitutional Convention, p. 158.

[33] Constitution of California, Art. X.

[34] *Ibid.*, Art. X, Sec. 6.

[35] *Statutes of California*, 1880, pp. 67-75.

SUMMARY OF THE EFFECTS OF THE CONTRACT SYSTEM OF PRISON LABOR.

The claims of the advocates of the contract system that it was a more profitable way of employing the convicts were undoubtedly well-founded. The prison officials could not be expected to master the intricate details connected with the successful management of a varied, modern, manufacturing business. The payment of a fixed sum by contractors who were already familiar with the business was a far simpler plan which insured a definite and reliable income. But the amount earned was often comparatively small because of the difficulty of finding employment for a large percentage of the convicts. In only one year (1862)[36] did the prisoners earn their support. The directors of that year succeeded in finding work for a high percentage of the convicts, but for the larger part of the period when the contract system was enforced, less than half of the prisoners were profitably employed. It was impossible to occupy all the idle convicts in the improvement of the prison property, so the officials frequently reported their inability to find employment for many of the convicts.[37]

Of course this great irregularity or total lack of employment had a very demoralizing effect on the prisoners. There were also other ways in which the contract system tended to destroy the prison discipline. The foreman of the contractors, who had control of the men while they were in the shops, were interested in the amount of work the convicts could produce, rather than in the enforcement of prison regulations. The extra pay allowed the prisoners as an inducement to diligent work was not under the control of the prison officials, and was frequently used for gambling, or to purchase drink or opium.

The contract system of prison labor was objected to, not on the ground of injury to the convicts, but because it was claimed that it tended to lower the wages of free laborers, and to prevent the industrial development of the state. Undoubtedly the influence of this factor was greatly exaggerated, as it was inevitable that, with the establishment of more perfect means of communication with other parts of the world, and the decline in the output of gold, it would be found impossible to maintain the high prices and wages of the early period. The unusual and long-continued depression of the seventies was due to widespread and complex causes which affected California in common with other sections of the country. Yet, after making due allowance for all such mistaken ideas, we must admit that there was a substantial foundation for the charges that the contract system of prison labor was a menace to the industrial welfare of the state. As has been pointed out, the market for California manufactured goods was limited. The employment of two or three hundred convicts could make a substantial difference in prices and wages in any particular trade. It tended to prevent the more wholesome development of industries operated solely by free labor. A manufacturer who was trying to build up a normal business was never secure from competition with some rival, who, with more capital, could establish a plant at the state prison, and, with the advantage of cheap labor, reduce the cost of production below what was possible for an employer who must pay the high wages then demanded by free mechanics.

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[36] The directors of this year were Leland Stanford, J. F. Chellis, and Wm. H. Weeks.

[37] Notice the Report of the Prison Directors in the *Appendices to the Journals* of the 16th, 18th, and 21st sessions of the legislature.

DEVELOPMENT OF PRISON INDUSTRIES UNDER STATE CONTROL.

The controversies over the employment of the prison labor were by no means ended with the constitutional and statutory enactments of 1879 and 1880. In their First Annual Report[33] the new Board of Prison Directors expressed doubts about the wisdom of abandoning the contract system, claiming that in other states it had been found more profitable and less difficult of administration than any other plan. However, they were preparing to establish the prison factory for the manufacture of jute bags which had been suggested by Governor Perkins in his inaugural message. The Governor had pointed out that twenty-five million of these bags were required every year for the grain crop alone. Their chief cost was for labor, and, as yet, only one jute factory operated largely by Chinese had been established in the state. He thought the jute might be grown here, thus affording a new industry for the farmers.[39]

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[33] First Annual Report of the Board of Prison Directors, June 30, 1880, *Appendix to Journals of Senate and Assembly*, 24th Sess., Vol. II, Doc. 8.

In accordance with the Constitution and the law of 1880, the agreements with the contractors expired January 1, 1882, and the convicts should then have been employed under state control in "the manufacture of any article or articles which, in the opinion of the Board, may inure to the best interests of the state."[40] As the time set for the change approached, it was learned that the new Prison Directors proposed to continue the manufactures that were then being carried on at San Quentin. Immediately the San Francisco Trades Assembly and the unions whose members believed themselves injured by competition with prison labor, called mass meetings for the discussion of the subject. The newspapers were filled with interviews in which proprietors and their employees expressed their indignation at this disregard of the law.[41] These protests had very little effect on the Prison Directors. They were ambitious to make the prison self-sustaining, and were proud of the fact that, when the state assumed control, there was not a single day's stoppage of the work in the various industries carried on at San Quentin.[42]

The new arrangement under which the prison industries were operated was a direct evasion of the spirit and intent, if not of the letter of the law. Instead of selling the labor of the prisoners at so much per day, it was agreed that the same contractors who had formerly operated the shops should furnish the material, appoint and pay the foremen, and then buy the finished product, which was supposed to be made under the control of the state. At the same time, the Prison Directors made an effort to find new industries that would not conflict with those already established in the state. It was proposed to confine the work in the furniture factory to the making of chairs, and a committee was appointed to investigate the advisability of manufacturing woolen hats at the prison.[43] From the outset, the jute mill was a success. The Governor and Directors felt confident that they would soon be able to fulfill their promises to make San Quentin self-supporting.[44]

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[39] Inaugural Message of Gov. G. C. Perkins, *Appendix to Journals*, 23rd Sess., Vol. V, Doc. 19, pp. 4-5.

[40] *Statutes of California*, 1880, p. 71.

[41] *Alta*, December 3, 4, 5, 11, 16, 17, 1881.

[42] Third Annual Report of the Board of Prison Directors, *Appendix to Journals*, 25th Sess., Vol. VI.

When the State Bureau of Labor Statistics was created, among other duties, the Commissioner was charged with the investigation of, "The number, condition, and nature of the employment of the inmates of the state prison, county jails, and reformatory institutions, and to what extent their employment comes into competition with the labor of mechanics, artisans, and laborers outside these institutions."[45] In his first biennial report, Commissioner Enos gives the results of such an investigation made in March, 1884. There were complaints from persons engaged in the tanning and manufacture of leather goods, and also from those who were making furniture, sashes and doors. It was claimed that, as a result of the prison competition, wages had been lowered in these trades twenty-five to fifty per cent.[46]

The Labor Commissioner recommended that the new contracts or "propositions" be annulled, or if continued, the proposals for such contracts should be advertised and let to the highest bidder. Those entering into such agreements should pay rent for the shops and furnish their own machinery and raw materials. They should agree to make monthly settlements and to sell the articles made at a fair price. The number of convicts employed in a particular trade and the amount produced should be restricted to five per cent. of the number of free mechanics employed, and of the amount produced in the state. He thought that the labor of the prisoners could be profitably utilized in the manufacture of supplies used in the state offices and institutions, or in the erection and maintenance of public improvements.[47]

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[43] Report of Prison Directors, *Alta*, December 16.

[44] Biennial Message, *Appendix to Journals*, 25th Sess., Vol. I, p. 12.

[45] *Statutes of California*, 1883, pp. 28-9, Sec. 3, Div. 11.

[46] First Biennial Report, Bureau of Labor Statistics, pp. 144-165.

[47] *Ibid.*, p. 165.

The Prison Directors continued to ignore these complaints. As the granite quarries at Folsom were now being operated by the prisoners, the stone-cutters were added to the list of workers who felt that they were injured by prison competition.[48] The unions whose members were complaining and the San Francisco Federated Trades Council entered upon a vigorous campaign to compel the enforcement of the law. That they succeeded at last in making some impression on the Prison Directors is evident from the fact that in their report for 1886 they remark, ''A labor agitation of unusual proportions swept the state. It was largely directed against the alleged competition of convict with free labor.''[49] As a result of all this agitation the Attorney General filed charges against the Prison Directors, and Governor Stoneman undertook an investigation.

After an exhaustive hearing of the evidence and arguments, the Governor rendered his decision. While he declined to remove the Prison Directors, or to declare them guilty of a violation of the law, he instructed them to give thirty days' notice to the contractors of the termination of their agreements.[50] This action resulted in the permanent closing of the furniture factory, the tannery, and the harness-making shops, and the temporary suspension of the sale of dressed stone from Folsom.[51]

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[48] Second Biennial Report, Bureau of Labor Statistics, p. 134.

[49] Report of the Prison Directors, November 1, 1886, *Appendix to Journals*, 27th Sess., Vol. II, p. 8.

[50] An account of the investigation is published in the Second Biennial Report of the Bureau of Labor Statistics, pp. 129 ff. The Committee from the Federated Trades Council reported the Governor's decision as follows: ''Governor Stoneman has decided the question, and, at last, so far as California is concerned, we have government for the people, not for the contractors who wax fat upon the products of convict labor and at the state expense. After thirty days no more stone will be dressed at Folsom to compete with the labor of the free stone-cutters, no more leather or leather-work, wood or wood-work, be turned out at San Quentin to impoverish the free workmen at those industries. . . . On Wednesday morning Governor Stoneman informed your Committee that he had decided to instruct the Prison Directors to give thirty days' notice to the contractors of the termination of their contracts with the prisons.'' The Committee thanked various Assemblies of the Knights of Labor, trade-unions, labor societies, and anti-Chinese organizations throughout the state for prompt and valuable aid. See also Report of the Prison Directors, November, 1886.

[51] The Warden's Report of August, 1888, says that they continued the sash and door factory, and that they were selling granite again, but that they were careful to sell it at the market price. (*Appendix to Journals*, 28th Sess., Vol. II.) A year later the Warden says, ''By order of your

Further agitation on the part of the labor organizations was necessary to secure the closing of the highly profitable sash and door factory on March 1, 1889. After ten years of agitation by the labor organizations, the provisions of the State Constitution and statutes were at last enforced.[52]

Aside from the desirability of making the prison at least largely self-supporting, regular employment was necessary to the welfare of the prisoners. The Directors were confronted with a perplexing problem, as it would cost $150,000 and take some time to install another jute factory. The Governor proposed to meet the difficulty in the same way that a practical manufacturer goes about filling an excess of orders; he suggested that they work a night-shift in the jute mill. New lights were installed, extra precautions taken to guard the men, and then the plan was put into execution. For about three years two shifts of prisoners worked in this way. The Warden declared that the experiment was an entire success.[53] As the prison was badly crowded, there was the additional advantage of being able to have two shifts of men in the sleeping quarters. In 1891 the night-work was given up, as with the installing of additional machinery it was possible to occupy all the prisoners in the daytime.

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honorable Board, the manufacture of doors, sashes, and blinds was peremptorily and finally discontinued on the first of March, and by that act an income of $25,000 to $30,000 a year was at once cut off. The action was taken to satisfy those who claimed that the labor of free citizens was interfered with and injured by the employment of our convict force.'' (*Appendix to Journals*, 29th Sess., Vol. II. Tenth Annual Report of the State Board of Prison Directors.)

[52] A new act to regulate and govern the State Prisons was passed in 1889. Sec. 18, p. 408, deals with the labor of convicts, and is as follows: ''All convicts may be employed by authority of the Board of Directors, under charge of the Wardens respectively, and such skilled foreman as he may deem necessary in the performance of work for the State or in the manufacture of any article or articles for the State, or the manufacture of which is sanctioned by law. At San Quentin no articles shall be manufactured for sale except jute fabrics. At Folsom after the completion of the dam and canal the Board may commence the erection of structures for jute manufacturing purposes. The Board of Directors are hereby authorized to purchase from time to time such tools, machinery, and materials, and to direct the employment of such skilled foremen, as may be necessary to carry out the provisions of this section, and to dispose of the articles manufactured, and not needed by the State, for cash, at private sale, in such manner as provided by law.''

[53] Reports of the Prison Directors, *Appendices to the Journals of the Senate and Assembly*, 28th Sess., Vol. II; 29th Sess., Vol. VII.

The sale of the product of the jute factories has been regulated by laws passed in 1893 and 1905. The first of these statutes authorized the Directors to fix a price for bags which was not to be more than one cent per bag in excess of the net cost of production, exclusive of prison labor. The demands for the jute goods were to be registered and filled in the order of application. No more than 5000 bags were to be sold to one person except by request of the Warden and the unanimous endorsement of the Directors, unless all other orders had been filled. The sales were allowed only to actual consumers; an affidavit to the effect that the goods were for the individual and personal use of the applicant must accompany each order.[54]

The present law passed in 1905 retains the main provisions of the law of 1893, but does not require their enforcement throughout the year. It was passed for the purpose of permitting the Prison Directors to dispose of any surplus stock after the farmers of the state have obtained all the bags they need. The regulations as to the number of bags sold to one person and the price are suspended between May 15 and October 15, so that the Directors may then dispose of an accumulated stock to the best possible advantage.[55] This careful regulation of the sale of the bags is for the purpose of preventing any combination to raise the price, such as had victimized the farmers prior to the enactment of this law.

Some further discussion and legislation has been necessary to settle the question of what use should be made of the fine granite quarries at Folsom. For some years the labor of the convicts was utilized in the construction of the prison buildings, and the dam and canal which furnish water power to the prison. In 1905 it was decided to install a rock-crusher and prepare road-metal for the public highways.[56] With abundant water power, the granite could be profitably quarried for paving and building stone, but, through the efforts of the trade-unions, a law was passed in 1901 prohibiting the employment of convicts on cut-stone work except for use in the prison improvements.[57]

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[54] *Statutes of California*, 1893, pp. 54-5.

[55] *Ibid.*, 1905, pp. 532-3.

[56] *Ibid.*, 1907, 99-101.

[57] *Ibid.*, 1901, pp. 272-3.

An attempt was made to repeal this law in 1905, to the great indignation of the members of the Building Trades Council whose representatives promptly set to work to prevent its success.

Thus the vexed question of how the convicts shall be employed has been solved to the comparative satisfaction of both the mechanics and the farmers of the state. There is no longer cause for complaint of the competition with prison labor in any of the skilled trades, and the farmers are sure of a good supply of the sacks which are necessary for the handling of their grain crops. There are, however, some disadvantages connected with the California plan for dealing with the subject of prison labor. The convicts do not acquire any useful knowledge that will help them live a life of honest industry when they leave prison. The jute industries have not proved very profitable because of the low price charged for the bags, and because the raw material must be purchased in India, as it has been found impossible to grow it in California.[58]

The trade-unionists are still vigilant in their efforts to guard against any possible future development of prison industries that may come into competition with free labor. The representatives of the San Francisco Labor Council[59] and the State Federation of Labor[60] reported the defeat of an attempt in 1907 to repeal the law prohibiting the employment of convicts in manufacturing certain articles. Having done away with convict labor in the skilled trades in the California prisons, the trade-unionists are now bending their energies to the task of preventing the sale within the state of convict-made goods from other parts of the country.[61]

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[58] In 1903 the Prison Directors were authorized to purchase California-grown hemp as a substitute for jute. (*Statutes of California*, 1901, p. 515.)

[59] Report of L. G. Benham, *Labor Clarion*, April 5, 1907.

[60] Report of L. B. Leavitt, Proceedings of Eighth Annual Convention, State Federation of Labor, p. 95.

[61] Senate Joint Resolution, *Statutes of California*, 1901, p. 938.

CHAPTER XVI.

THE STATE BUREAU OF LABOR STATISTICS.

ATTEMPTS TO ESTABLISH A LABOR BUREAU IN 1878-9.

The first attempt to establish a State Bureau of Labor Statistics was made in 1878, at the time when the sand-lot meetings of the unemployed were attracting the attention of the state. It is evident that, as originally introduced, the bill contemplated the creation of a bureau whose chief functions should be the collection and dissemination of statistics or other information about the conditions of labor in the state.[1] This bill was referred to a joint committee on labor affairs, where the character of the proposed bureau underwent a complete transformation. The measure reported provided for the establishment of a State Labor Bureau, which, in its functions and form of organization, was similar to the Labor Exchange of 1868-1871.[2] It passed both branches of the legislature but failed to receive the approval of the Governor.[3]

In the convention of 1878-1879, an attempt was made to add a section to the much overloaded new Constitution, requiring the establishment of a Bureau of Labor and Labor Statistics.[4] C. J. Beerstecker, the champion of this measure, was a lawyer and a socialist, who had come to San Francisco in 1877. He immediately found favor with the Workingmen's Party and was one of their representatives in the Constitutional Convention. His speeches in defense of his proposed amendments to the Constitution show a somewhat exaggerated conception of the possible good which the proposed bureau might accomplish. It was claimed that the condition of the working classes in Massachusetts had been "vastly bettered" since the establishment of such a bureau, and that, among other benefits, it had brought about an absence of strikes and destructive riots. In addition to the publication of weekly and annual reports giving information about labor conditions, this Bureau was to undertake a paternalistic supervision of the laboring classes, and to recommend legislation in their behalf.[5] The two superintendents were to be elected, and to have offices in Sacramento and San Francisco.[6]

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[1] The *Alta*, January 22, 1878, gives the following summary of the bill introduced by Senator Donovan: The Bureau is practically instructed to inquire into the wages of labor, cost of living, amount of work required, the amount of labor-saving machinery, the number and condition of the Chinese, the amount of state and United States land in California, the manner in which people can procure enough for homes, and the manner in which speculators procure it; the system of taxation, especially as regards the difference of assessing large and small holdings, water, gas, railroads, etc. This information was to be presented to the legislature in biennial reports. The officers were to be a chief and a deputy appointed by the Governor.

[2] The Governor was to appoint a board of five commissioners, who would select a secretary. The Bureau was to prepare lists of those needing labor, together with information about the character of the work offered, the sanitary conditions of the locality where the labor was to be done, the provisions for the comfort of the workmen, and the probable term of employment. Applicants for positions were also to be registered. In all cases when practicable situations were to be filled in the order of the applications. The board was also to establish a land department, where a record would be kept of lands for sale or lease, or government land subject to location. The services of the Bureau were to be free to all except aliens. (*Sacramento Record-Union*, February 27, 1878.)

[3] *Senate Journal*, 138, 285, 459. *Assembly Journal*, 521. A pocket veto.

The members of the committee to whom Beerstecker's plan was referred were unanimously of the opinion that it was inexpedient to establish such a bureau by constitutional enactment, but were persuaded by the author of the measure to report it back without recommendation for discussion on the floor of the convention. In defending the measure, Beerstecker declared that it had been introduced at the request of a large number of the citizens of the state, and that a similar bill had passed the legislature.[7]

The opponents of the measure pointed to the history of the Labor Exchange, claiming that it had soon fallen into the hands of politicians, and that it had failed to benefit labor to any great extent. It was declared that the laboring men had no use for statistics, or learned discussions of economic questions, but needed only to know where they could find employment. Finally, it was pointed out that the legislature had power to establish such a bureau at any time, and that it was unwise to give the more permanent constitutional sanction to a bureau which might prove worthless. The amendment was indefinitely postponed by a vote of 48 to 34.[8]

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[4] Proceedings of the Constitutional Convention, 1878-9, pp. 86, 92.

[5] *Ibid.*, p. 370, Sec. 2. "The duty of this department shall be to collect and publish statistical details concerning every class of labor in the State; also to have general supervision of the commercial, industrial, educational, social, and sanitary condition of the laboring classes."

[6] *Ibid.*, Sec. 4.

[7] Proceedings of the Constitutional Convention, 1878-9, p. 1163.

CREATON OF THE BUREAU OF LABOR STATISTICS IN 1883.

The efforts to establish a Bureau of Labor Statistics were renewed in 1883, when two bills for its creation were presented. These were referred to a committee which brought in with a favorable recommendation the bill whose passage resulted in the final establishment of the Bureau.[9]

Each newly appointed Labor Commissioner has contemplated with dismay the vast amount of work which the act creating the Bureau of Labor Statistics laid upon him and his small force of assistants. Not only did the original act map out an extensive field of investigation, but since then the legislature has from time to time charged the State Labor Commissioner with new duties of the most arduous character.

Section 3 of the original act provides: "The duties of the Commissioner shall be to collect, assort, systematize, and present, in biennial reports to the legislature, statistical details relating to all departments of labor in the state, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the probable chances of all being employed, the operation of labor-saving machinery in its relation to hand labor, etc." This general summary of duties was amplified in the more specific statement of the twelve groups in which the facts collected might be classified.[10]

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[8] Proceedings of the Constitutional Convention, pp. 1162-4.

[9] Assembly bill No. 20 (*Assembly Journal*, 25th Sess., pp. 18, 213, *Senate Journal*, p. 300. *Sacramento Daily Record-Union*, February 3, 1883.) The bill passed with little opposition; Assembly vote, 52-11; Senate, 30-1.

[10] Said statistics may be classified as follows:
1. In agriculture.
2. In mechanical and manufacturing industries.
3. In mining.

SUMMARY OF THE WORK OF THE BUREAU.

The passage in 1889 of the first child-labor law, and of the statute requiring sanitary conditions of work and the provision of seats for female employees, laid upon the Labor Commissioner the duties of factory inspector for the rapidly developing industries of the state. Two years later the Chinese registration law directed this Bureau to issue certificates to some seventy-two thousand Chinamen.[11] In 1901 the carpenters secured the passage of a measure which made it the duty of the State Labor Commissioner to inspect and pronounce upon the safety of scaffolding.[12] This much overburdened public official was loaded with extensive new obligations in 1905, when a law was passed charging him with the collection of the state statistics of marriage, divorce, and crime.[13]

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4. In transportation on land and water.

5. In clerical and other skilled and unskilled labor not above enumerated.

6. The amount of cash capital invested in lands, buildings, machinery, materials, and means of production and distribution generally.

7. The number, age, sex, and condition of persons employed; the nature of their employment; the extent to which the apprentice system prevails in the various skilled industries; the number of hours of labor per day; the average length of time employed per annum, and the net wages received in each of the industries and employments enumerated.

8. The number and condition of the unemployed, their age, sex, and nationality, together with the causes of their idleness.

9. The sanitary conditions of lands, workshops, dwellings, the number and size of rooms occupied by the poor, etc.; the cost of rent, fuel, food, clothing, and water in each locality of the state; also the extent to which labor-saving processes are employed to the displacement of hand labor.

10. The number and condition of the Chinese in the state; the social and sanitary habits; number of married and single; the number employed, and the nature of their employment; the average wages per day at each employment, and the gross amount yearly; the amounts expended by them in rent, food, and clothing, and in what proportions such amounts are expended for foreign and home productions, respectively; to what extent their employment comes in competition with the white industrial classes of the state.

11. The number, condition, and nature of the employment of the inmates of the state prison, county jails, and reformatory institutions, and to what extent their employment comes into competition with the labor of mechanics, artisans, and laborers outside these institutions.

12. All such other information in relation to labor as the Commissioner may deem essential to further the objects sought to be obtained by the statute, together with such strictures on the condition of labor and the probable future of the same as he may deem good and salutary to insert in his biennial reports. (*Statutes of California*, 1883, p. 27-29.)

[11] *Statutes of California*, 1891, p. 192, Sec. 24.

[12] *Ibid.*, 1901, p. 12.

[13] *Ibid.*, 1905, p. 109.

The appropriations for the maintenance of the State Bureau of Labor Statistics have never been commensurate with the extensive labors with which it has been charged. In addition to the salaries of the Commissioner and his deputy, office rent and printing, the law-makers have, since 1889, appropriated an additional sum of from $2,500 to $4,500 per annum for assistants and traveling expenses.[14] Deduct from these sums the amount necessary to pay a secretary or stenographer, and the traveling expenses of the Commissioner and deputy, and it will be seen that only one or two assistants would be available for the extensive work of inspection and collection of information required of the Bureau.

The collection and interpretation of statistics is now fully recognized as work which requires careful preparation, but not one of the men who have been appointed to carry on the difficult work of the California Bureau of Labor Statistics has ever had the slightest special training for the services which he undertook. The office has always been regarded as a purely political appointment. The labor organizations have made several unsuccessful attempts to secure the position for some prominent leader whom they considered particularly well qualified to protect their interests. Two of the commissioners seem to have obtained the position as a reward for political activities, two more had rendered long and faithful services to the Southern Pacific Company, and it was generally believed that this powerful influence in the politics of the state secured their appointment. Even when the men appointed to the position had fair ability and might have learned something of the duties of the office, the state has never profited by their expensive education through experience, for no Labor Commissioner has ever been reappointed at the expiration of his four-year term of office.

When we contemplate this combination of an amount of work impossible of achievement, inadequate appropriations, and incompetent, frequently changing commissioners, we are prepared for the unsatisfactory results achieved by this branch of the state government.

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[14] These appropriations were as follows: 1889, $9000; 1891, $9000; 1893, $8000; 1897, $7500; 1899, $5000; 1900, $5000; 1903, $5000; 1905, $7000; 1907, $9000. Prior to 1899, the printing came out of this contingent fund. The law appropriating $9000 in 1907 passed, but by some miscalculation the money was not appropriated.

The first Labor Commissioner, J. S. Enos,[15] made a brave effort to collect the varied information which he was required to report. The act creating the Bureau provides that it shall be the duty of the officers of state departments and the assessors of counties, upon written application of the Commissioner, to assist in carrying out the provisions of the act by furnishing such information as they can command. The newly appointed Commissioner studied over the many subjects on which information was required, and then drew up elaborate forms which contained some 325 questions of the most exhaustive and comprehensive character. The busy county assessors would certainly have required an extra clerk had they undertaken to produce the array of statistics demanded. Naturally very few of the assessors responded enthusiastically to this heavy addition to their labors. Commissioner Enos makes the following report of the very unsatisfactory results of his attempt to meet the full requirements of his office:

"Out of 52 counties, answers indeed were received but from 41. Of this number, 10 reports only were passable, 4 only were good, and 27 so bad that to reprint them would not only be encumbering of the State Printers' office, . . . but would be filling this report with waste paper, and inviting your attention to a series of fiascoes from which nothing could be learned except a lesson of incapacity."[16]

Notwithstanding these discouraging results, another attempt was made to obtain general information from the assessors. The responses which were received from thirty-five counties are published without any attempt at tabulation in the Second Biennial Report.

Later Labor Commissioners have made no attempts to cover the whole field of investigation suggested when the Bureau was created, but have selected special topics which they felt to be of particular interest. Among the more important subjects treated in the various reports are the following: Wages and Hours of Labor;[17] The Eight-hour Law;[18] Chinese Labor;[19] Japanese Labor;[20] Women Workers;[21] Strikes;[22] Convict Labor;[23] Apprenticeship;[24] Child Labor;[25] Industrial Education;[26] Employment Agencies;[27] Trades Unions;[28] and Industries of the State.[29]

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[15] First Biennial Report of the Bureau of Labor Statistics, p. 103.

[16] J. S. Enos was a State Senator from San Francisco from 1879 to 1882. He stumped the state for Governor Stoneman, speaking in over thirty counties. He interested himself in the early labor movement of San Francisco. The newspapers charged him with being something of a demagogue.

The statistics collected under these various headings have been classified and interpreted in the simplest, most obvious ways. In many instances no attempt whatever is made at tabulation; individual questions and answers which might have been classified in a few significant tables stretch through many pages of the reports.[30] No attempts are made at systematic comparisons of conditions in different periods of the states' development. Strange to say, each Commissioner either carried away or destroyed the records of his investigations, so that his successor entered upon a bare office, and had no information of previous actions except that contained in the printed reports.[31]

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[17] First B. R. 211-225; Second B. R. 139-144; 588-629; 3d B. R. 132-148; 5th B. R., 190-465; 9th B. R. 57-63; 10th B. R. 63-66; 16-24; 12th B. R. 82-165.

[18] 1st B. R. 196-204; 7th B. R. 92-101.

[19] 1st B. R. 166-169; 2d B. R. 80-117; 3d B. R. 162-185.

[20] 7th B. R. 101-126; 9th B. R. 15-35; 10th B. R. 29-31; 11th B. R. 72-78; 12th B. R. 61-71.

[21] 3d B. R. 14-108; 9th B. R. 35-46; 11th B. R. 11-17.

[22] 3d B. R. 149-181; 7th B. R. 149-160; 12th B. R. 183-214.

[23] 1st B. R. 144-165; 2d B. R. 118-138; 9th B. R. 8-12.

[24] 3d B. R. 193-205; 4th B. R. 18-29.

[25] 11th B. R. 11-17; 12th B. R. 174-5.

[26] 3d B. R. 227-291.

[27] 7th B. R. 11-51; 52-71; 9th B. R. 73-83; 12th B. R. 177-182.

[28] 3d B. R. 109-192; 7th B. R. 136-149; 9th B. R. 84-122; 10th B. R. 67-79; 11th B. R. 30-72.

[29] 4th B. R. 11-101; 5th B. R. 15-31.
This is not an exhaustive list of the subjects treated in the Reports of the Bureau of Labor Statistics, but merely a summary of the more important investigations. The reports of the efforts to enforce the labor laws give additional items about child labor. The Reports were published in separate volumes and also bound in the appendices of the Legislative Journals. The sixth and eighth biennial reports were never published.

[30] An example of this is found in the Fifth Report (pp. 246-465), where 2492 individual records are printed without any attempt at classification. Other instances showing the absence of the most rudimentary knowledge of the method of handling statistics are of frequent occurrence in the Reports.

This failure to preserve records of the individual investigations may have been partly due to the amendment to the law which imposed a heavy penalty upon persons disclosing the information obtained about particular individuals or firms. When the agents of the Bureau commenced the collection of statistics, they frequently found both the employer and employee reluctant to answer questions. There was a general disposition to regard the inquiries as an impertinent interference with private business.

To remedy this evil, two amendments were made to the statute creating the Bureau. One of these imposes a fine of not less than fifty or more than two hundred dollars upon any one who refuses to admit the Labor Commissioner or his representative to any workshop or place of business, or who neglects or refuses to furnish any statistics or information pertaining to the lawful business of the Bureau.[32] The second amendment protected the employer by forbidding the use of the names of the individuals, firms or corporations supplying information to the Bureau. Any agent or employee of the Bureau who discloses the information obtained in this way is subject to a fine of not more than $500.[33]

The collection of statistics by mail has never proved satisfactory, so there is a tendency to give more attention to conditions in the vicinity of San Francisco, where the Bureau has been located since its creation, than to other portions of the state.

The earlier Labor Commissioners tried to make their office a sort of bureau of publicity in labor controversies by undertaking a number of special investigations. The first of these, which dealt with the complaints about the conditions of work on the seawall being constructed at San Francisco, was undertaken by order of the state legislature, and several of the later ones were made at the special request of the labor organizations interested.[34] In some of these investigations witnesses representing both sides of the controversies were summoned and a formal trial conducted. The printed testimony gives much valuable information about the labor conditions of this period.

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[31] W. V. Stafford, who was appointed in 1902, commenced an admirable card record of the work of the office. Unfortunately it was destroyed in the fire following the earthquake of 1906, and was only partially replaced before he left the office.

[32] *Statutes of California*, 1889, pp. 6-7, Sec. 7.

[33] *Ibid.*, Sec. 8.

One of the Commissioners, E. L. Fitzgerald, was quite skeptical about the value of such statistics as he could collect with his limited office force,[35] and without any special authority, announced a radical change in the policy of the Bureau. He determined to transform it into a department of practical usefulness by the establishment of a free employment agency, and by undertaking to give advice and assistance in remedying the grievances of the working classes.

This new policy was pursued quite energetically. The Commissioner not only conducted a thriving employment business, but also investigated the other agencies and registration bureaus of the state.[36] In addition, he did an extensive business in collecting unpaid wages for workingmen. Bills were drafted for the establishment of branch employment agencies in other parts of the state. But Fitzgerald was soon succeeded by a new Commissioner, who did not believe in state employment agencies, so the whole matter was dropped.

The last three Labor Commissioners have given an increasing amount of time to the enforcement of the laws regulating the labor of children, and providing for safe and sanitary conditions of work. On the whole, the best work of this kind done by the Bureau was that for the enforcement of the child-labor law, under the supervision of Commissioner W. V. Stafford. He not only published the law throughout the state, but also made extensive personal investigations, and last, but by no means least important, he caused the arrest and prosecution of obstinate offenders.[37]

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[34] The chief subjects investigated were as follows: Seawall, Second Biennial Report, 325-442; Coast Seamen, City Front Workers, Sweatshops, San Pedro Strike, Printers, Third Biennial Report, 330-354; San Francisco and Oakland Laundries, Chinese Laundries, Napa Woolen Mill, Stone-cutters' Strike, Fourth Biennial Report, 314-327; Labor and Capital, Shoe Trade, Breweries, Coast Seamen, Sweatshops, Fifth Biennial Report, 27, 54, 101, 166, 123; Bakeshops, Time-check System, Collection of wages, Seventh Biennial Report, 126, 83, 72.

[35] "I am free to say that a department created solely for the collection of statistics, in this or any other state, restricted to a small appropriation with which to maintain a headquarters, pay salaries, and traveling expenses incident to investigation, is a useless and extravagant waste of public funds, by reason of the fact that to achieve any success in the work a staff of efficient agents, with sufficient funds to accomplish the work, is absolutely essential." (Seventh Biennial Report, Bureau of Labor Statistics, p. 6.)

[36] *Ibid.*, p. 52 ff.

While there have been a few such instances of commendable zeal, the Bureau of Labor Statistics has not, on the whole, been an effective branch of the state government. It is obvious that the first step towards increasing its efficiency must be the enforcement of some sort of civil service regulations. So long as the office is simply a means of paying political debts, the securing of a competent Commissioner will be but a happy accident.

If we are ever to have any continuous policy in the Bureau, or a careful study of the development of the labor interests of the state, it is absolutely necessary to have a more stable tenure of office. The fine work which has been done by the Massachusetts and United States Bureaus of Labor was largely due to the experienced services of Carroll D. Wright. The knowledge that the Commissioner's term of office will soon expire and that his work may then be overthrown by a successor of differing views, must often prove discouraging to his efforts for thorough work or permanent results.

It is evident to all that the force of assistants allowed the Labor Commissioner is absurdly inadequate to perform the work of the office. If California is to do its duty in enforcing the laws for the protection of the health and safety of the rapidly increasing army of workers in the industries of the state, a well-organized system of factory inspection is absolutely necessary. Six or eight inspectors could be kept busy by an efficient Labor Commissioner. In Eastern states it has been found that women inspectors often do more effective work for the enforcement of the laws protecting women and children. When we make the necessary increase in the number of factory inspectors, we should profit by their experience, and enlist energetic women inspectors, who can devote themselves to promoting the welfare of the many women and children now found among the wage-workers of the state.

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[37] This has already been more fully discussed in the chapter on child-labor.

CHAPTER XVII.

THE STATE BOARD OF ARBITRATION.

The statute establishing the State Board of Arbitration, unlike the other California labor laws, was not passed at the solicitation of the labor organizations. They have refused to endorse, or actively opposed all legislation of this kind. The law was passed by the efforts of the State Labor Commissioners, and is one of the few measures for which they failed to secure the active co-operation of the trade-unions. It undertook to create a new institution rather than to embody or regulate what already existed as the natural outgrowth of actual experiences, and, as is often the case with such theoretical legislation, it has failed to meet the actual social need for which it was designed.

J. S. Enos, the first California Labor Commissioner, pointed out in his Second Biennial Report that the arbitration laws of the state were general in their application, and not adapted to the settlement of labor disputes. He published a copy of the New York law creating a State Board of Arbitration, and recommended the passage of a similar law in California.[1] A bill providing for the appointment of such a board was drafted by his successor, J. J. Tobin. It was to consist of three members, one chosen from the ranks of labor, a representative of the employers, and the Labor Commissioner. This bill was presented for endorsement to the Federated Trades Council and the Labor Convention then in session in San Francisco. A full discussion brought forth many objections, among the most serious of which were the following:[2]

(1) The political obligations incurred by the Governor would prevent him appointing arbitrators entirely unbiased with regard to labor disputes.[3]

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[1] Second Biennial Report, Bureau of Labor Statistics, p. 14 (*Appendix to Journals of Senate and Assembly*, 27th Sess., Vol. 7, Doc. 3).

[2] *Coast Seamen's Journal*, December 5, 12, 19, 1888.

[3] *Ibid.*, December 19, 1888.

(2) The Labor Commissioner as the third member of the Board would hold the balance of power. The great interests at stake would make him subject to corrupt influence. It was not safe to put so much power in the hands of one man.[4]

(3) There was no way to enforce the decisions of the Board.

(4) It was declared that the provision requiring both parties to wait three weeks for the decision of the Board would result disastrously to the working men, as it would enable the employer to prepare himself for the strike that might follow the refusal to sign the agreement.[5]

The Labor Convention embodied the conclusions of its debate in a motion declaring that, "state arbitration, under existing conditions when a state is not yet what it ought to be, would be, if anything, detrimental to the best interests of the workers."[6] The Federated Trades Council also declined to endorse the measure.

ESTABLISHMENT OF THE BOARD IN 1891.

Two years later the efforts to secure state arbitration of labor disputes were renewed, and in March, 1891, the present law was finally enacted. It provides for the appointment of a state board to consist of three members, a representative of the employers, one chosen by the employees, and a third disinterested member, who is to act as the chairman of the board. The Governor is authorized to make appointments and fill vacancies. In case the parties to the dispute do not desire to submit the controversy to the state board, the law authorizes them to select representatives for each side, who are to choose a third as chairman, the three to constitute a special board with powers similar to those of the state board.[7]

The state board is to take action only upon formal application of one or both parties to the dispute. The law requires that this application shall contain a concise statement of the grievances to be arbitrated, and also a promise to continue in business or at work until the decision of the board is rendered. If possible, this must be given within three weeks of the date of filing the application.[8]

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[4] Criticisms by the editor of the *San Francisco Daily Report*, December 3, 1888.

[5] *Coast Seamen's Journal*, December 12, 1888.

[6] *Ibid.*, December 19, 1888. See also December 5.

[7] *Statutes of California*, 1891, pp. 49-50, Sec. 1.

The section in regard to the enforcement of the decision of the Board is very weak. It provides that the parties making application for the assistance of the Board shall be bound by the decision for six months, unless either party wishes to abrogate the agreement after giving due notice. The time allowed by this notice is to be sixty days, or such other period as may have been specified in the agreement. No penalty attaches to the violation of the requirements of this section.[9]

The Board is also authorized to conduct public investigations of complaints or grievances between employers and employees, and to publish the results.[10]

Only one board of arbitration has been appointed for the execution of this law.[11] Two very trivial controversies were presented to it for investigation. The members of the Granite Cutters' Union of San Francisco and Oakland went on strike because of an order prohibiting smoking during working hours. The contractors claimed that they had recently granted the men the eight-hour day, and that as the working hours were shorter, they could not afford the loss of time due to smoking. The representatives of the union argued that, "a man should not be judged by the number of pipes he smoked, but by the amount of work he accomplished during the day," and also claimed that, when the eight-hour day was granted to the Union, no condition to stop smoking was imposed. The Board decided unanimously that the notices prohibiting smoking should be removed, and that the men should return to their work.[12]

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[8] *Statutes of California*, 1891, pp. 49-50. "Sec. 2. Whenever any controversy or difference exists between an employer, whether an individual, copartnership, or corporation, which, if not arbitrated, would involve a strike or lockout, and his employees, the Board shall, upon application, as hereinafter provided, and as soon as practicable thereafter, visit, if necessary, the locality of the dispute and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, ought to be done or submitted to by either, or both, to adjust said dispute, and make a written decision thereof. This decision shall at once be made public, and shall be recorded upon proper books of record to be kept by the Board.

"Sec. 3. Said application shall be signed by said employer or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent, or by both parties, and shall contain a concise statement of the grievance complained of, and a promise to continue on in the business or at work, without any lockout or strike, until the decision of said Board, which must, if possible, be made within three weeks of the date of filing the application. Immediately upon receipt of said application the Chairman of said Board shall cause public notice to be given of the time and place for hearing. Should the petitioners fail to keep the promise made therein, the Board shall proceed no further thereupon without the written consent of the adverse party. And the party violating the contract shall pay the extra cost of the Board entailed thereby. The Board may then reopen the case and proceed to the final arbitrament thereof as provided in section two hereof."

[9] *Ibid.*, Sec. 4.

[10] *Ibid.*, Sec. 5.

[11] Oscar Lewis representing the employers, Charles Grambarth for the employees, and Oliver Eldridge for the third member and chairman. The Board organized on May 20, 1891, and elected Albert May secretary. The members of the Board were paid five dollars a day for the actual time of service. $2500 was appropriated for the expenses of the Board, but only a small part of the sum was ever expended.

The second controversy was even more trivial than the first. The Boot and Shoe Makers' Labor League wanted the manufacturers to agree that they would not employ a certain man, who had made himself objectionable by his practice of the "sweating system." As the man had left the city, the case was dismissed.[13]

FAILURE OF THIS PLAN FOR SETTLING LABOR DISPUTES.

In submitting the first annual Report of the State Board of Arbitration, its members agreed that, "Arbitration, as a means of settling differences between employers and employees, and preventing, to some extent, strikes and lockouts, is almost impossible under the provisions of the present laws governing this Board, and we therefore respectfully recommend that the Act of March 10, 1891, providing for a State Board of Arbitration, be either repealed or amended so as to become effective."[14]

They suggested that the work of the Board would be more efficient if a permanent office with a paid secretary could be maintained. It would be the duty of this secretary to conduct the correspondence, and keep the records, and also to watch closely for any threatened or actual difference between employers and employees. On discovering such possible causes of controversy, the secretary would visit the parties concerned and try to persuade them to submit their disagreements to arbitration before resorting to a strike or lockout. They thought that many labor troubles which sometimes arose from trivial misunderstandings, might be averted in this way.[15]

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[12] *Appendix to Journal of Senate and Assembly*, 30th Sess., Vol. 1, Doc. 16. Proceedings and Report of the State Board of Arbitration.

[13] *Ibid.*

[14] *Ibid.* Amendments suggested.

It was also recommended that the Board of Arbitration be given power to summon witnesses and examine them under oath, and that its decisions be given some judicial standing. It was declared that the Board as then organized was entirely without force or use, and that unless it could be strengthened in this way, it should be altogether abolished.

The second and last Report of the State Board of Arbitration was submitted in September, 1894.[16] The Commissioners said that, though there had been occasions in which their mediation might have been beneficial, they had not been called upon to settle any controversies, and that there was nothing of importance to report. Since then, the arbitration law has continued to encumber the statute books, not even attracting sufficient attention to secure its repeal.

The great strike of the San Francisco teamsters in 1901, which proved so disastrous to the business interests of the state, as well as the widespread suffering due to the strike of the Pennsylvania coal miners, renewed the discussion of the need of some means of protecting the public from prolonged industrial disputes. Governor Gage, whose intervention had forced the settlement of the teamsters' strike, urged, in his second biennial message, the passage of a more effective arbitration law. He thought the Governor and Labor Commissioner should be added to the Board, and believed that, with some fair measure, public opinion would induce the disputing parties to refer their differences to this Board, whose decision should be binding.[17] As neither the employers or employees have had much faith in the effectiveness of such a method of settling disputes, propositions of this kind have received but little support.[18]

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[15] *Appendix to Journals of Senate and Assembly*, 30th Sess., Vol. 1, Doc. 16, p. 6.

[16] *Appendix to Journal of Senate and Assembly*, 31st Sess., Vol. 6, Doc. 13.

[17] Second Biennial Message of Governor Gage, *Appendix to Journal of Senate and Assembly*, 35th Sess., Vol. 1, p. 58.

However, there have been many instances where impending strikes or lockouts have been averted by arbitration of the disputed points. But the negotiations were carried on between the officers or representatives of the organizations of employers and employees directly interested. They are more competent to discuss the questions raised, which often requires a knowledge of the technical details of the various trades involved. The fact that, before resorting to a strike, the individual unions nearly always seek the endorsement of the central body, frequently results in an arbitration of the difficulties. The Secretary and Executive Committee of the Labor Council investigate and seek to adjust the difficulties before recommending the endorsement of the strike, and many disputes are settled in this way. There is no lack of recognition of the principle of arbitration in the California labor movement, though the attempt to secure State intervention has proved a complete failure.

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[18] A bill of this kind was introduced in 1907. G. B. Benham, the legislative representative of the San Francisco Labor Council in his report on the labor measures before the legislature says: ''Assembly bill 174 proposed an arbitration board for the settlement of labor disputes. It was a mass of incongruities, impossibilities, indefiniteness, and delay, furnishing only a somewhat systematic method of obtaining facts and testimony in labor difficulties, without set time for discussion, which might or might not be retroactive, and with no definite means for, or real likelihood of the decision being accepted as final when given.'' As a result of the opposition ot the labor organizations, the bill never even came to a vote in the legislature.

CHAPTER XVIII.

THE UNION LABEL.

The union label, which is now recognized as one of the most effective means of securing patronage for goods produced under fair conditions of labor, was one of the products of the long struggle against Oriental labor in California. The cigarmakers, who were among the first workers to come into competition with the Chinese, are generally credited with being the originators of this device for identifying goods made under union conditions.

The Chinese have seemed peculiarly adapted to the cigarmaking trade. As early as 1862,[1] we find the white workmen attempting to drive the Chinese from this business by inducing the public to withhold its patronage from their products. At the time of the adoption of the cigarmakers' white label, the trade was almost entirely monopolized by the Chinese. The label was a devise for advertising and creating an artificial demand for the relatively small product of the few remaining white men in the business.[2]

FIRST USE OF MEANS OF IDENTIFYING PRODUCTS OF UNION LABOR IN 1869-1874

The idea of using some means of identifying goods produced under fair conditions of labor was not entirely original with the cigarmakers. In 1869 when the Carpenters' Eight-hour League was engaged in a contest with the California Mills, resolutions were adopted as follows: "Res. That the members shall not put up work gotten out at the California Mills from and after the day they commence working their men ten hours per day.

"Res. That the League will furnish a stamp to all eight-hour mills, that they may stamp their work so that we may know what material to put up and may avoid using the work got out by the ten-hour mills."[3]

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[1] Tuthill, *History of California*, p. 638; Bancroft, *Essays and Miscellany*, p. 347.

[2] April 29, 1876, two years after the adoption of the label, the *Alta* contains the following notice in regard to the Cigarmakers' Association: "This association has sixty members enrolled. It is said there are not over a hundred white cigarmakers in the State of California, while in the city of San Francisco alone, from eight thousand to ten thousand Chinamen are employed in the various branches of the business."

The California Cigarmakers' Union adopted a white label in 1874 to indicate that only white labor was employed in the production of goods bearing the label. A year later, the St. Louis cigarmakers adopted a red label to designate goods made by union members. In 1880, at a general convention of cigarmakers held in Chicago, a dispute arose between members from the California unions and from St. Louis about the color to be adopted for a general label. At the suggestion of one of the Eastern delegates, the matter was compromised by adopting the third color of the flag, since which time we have the blue label for cigars made under union conditions.[4]

In the turmoil of the seventies, it was hardly possible to use this peaceful weapon of trade-unionism effectively, but with the growth of strong unified organizations in the eighties, its value was recognized by all the trades that felt the need of defense from Oriental competition. The Knights of Labor, and after 1886 the Federated Trades Council, helped prepare large groups of workers for effective co-operation, and so made possible a demand for goods produced under what were regarded as fair conditions of labor. We find not only the Cigarmakers, but also the Shoemakers White Labor League, and the women engaged in shirt making vigorously appealing to their fellow trade-unionists for the support of the various labels.

EFFORTS TO PREVENT FRAUDULENT USE OF THE LABEL.

Apparently the demand for products marked in this way soon became of sufficient importance to stimulate the use of fraudulent labels,[5] for in 1887 three bills for the protection of trade-union labels were presented in the California legislature. One of these bills which was intended for the protection of the shoemakers' label did not pass, but its object was fully attained by the two more general bills which were passed by the unanimous vote of both the senate and assembly.[6]

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[3] *Bulletin*, August 3, 1869.

[4] Brooks, J. G., *Bulletin of the Department of Labor*, No. 15, March, 1898, "Origin of the Union Label."

[5] The *Daily Report* of March 12, 1887, in its account of the Clunie bill for the protection of the label says, "The Clunie bill was formulated at the instigation of the cigarmakers of San Francisco, who have been materially affected by the use of bogus white-labor labels. Several San Francisco cigar manufacturers employing Chinese have got out spurious labels, and it has extended even to the Chinese manufacturers."

The first of these laws added two sections to the Political Code authorizing trade-unions or labor organizations to adopt trade-marks or labels, providing for the recording of such labels, and for their protection by the general laws applicable to trade-marks. The president or presiding officer of such labor organization is authorized to bring suit for the protection of the rights granted.[7] The second law makes it a misdemeanor to misrepresent, by the use of any imprint, label, stamp, or inscription, the character of the labor employed in the manufacture of any article.[8]

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[6] Senate bill 291, *Senate Journal*, 27th Sess., pp. 161, 336. *Assembly Journal*, p. 439.

[7] Senate bill 343, *Senate Journal*, 27th Sess., p. 336. *Assembly Journal*, p. 805.

"Sec. 3200. Any trade-union, labor association, or labor organization, organized and existing in this State, whether incorporated or not, may adopt and use a trade-mark and affix the same to any goods made, produced or manufactured by the members of such trade-union, labor association, or labor organization, or to the box, cask, case, or package containing such goods, and may record such trade-mark by filing or causing to be filed with the Secretary of State its claim to the same, and a copy or description of such trade-mark, with the affidavit of the President of such trade-union, labor association, or labor organization, certified to by any officer authorized to take acknowledgments or conveyances, setting forth that the trade-union, labor association, or labor organization of which he is the President is the exclusive owner, or agent of the owner, of such trade-mark; and all the provisions of article three, chapter seven, title seven, part three, of the Political Code are hereby made applicable to such trade-mark.

Sec. 3201. The President or other presiding officer of any trade-union, labor association, or labor organization, organized and existing in this State, which shall have complied with the provisions of the preceding section, is hereby authorized and empowered to commence and prosecute in his own name any action or proceedings he may deem necessary for the protection of any trade-mark adopted or in use under the provisions of the preceding section, or for the protection or enforcement of any rights or powers which may accrue to such trade-union, labor association, or labor organization by the use or adoption of such trade-mark.'' (*Statutes of California*, 1887, pp. 167-8.)

An Act to prevent fraud and imposition in the matter of stamping and labeling produce and manufactured goods, *Statutes of California*, 1887, p. 17. This was embodied in Sec. 349a of the Penal Code in 1901, was declared unconstitutional on account of a defect in the enacting clause, and re-enacted in 1905.

Sec. 349a. Any person engaged in the production, manufacture, or sale of any article of merchandise made in whole or in part in this State, The minutes of the Federated Trades Council in the period between 1887 and 1890 contain frequent reports showing the efforts of the unions interested to advertise their labels and to enlist the purchasing public, particularly their fellow-workers, in the promotion of the demand for goods made by the members of the unions. The cigarmakers were having the hardest struggle for existence. For the third time, they started a paper in 1889 to help educate the public to a demand for goods made by white labor.[9] In a report to the Federated Trades Council in August, 1890, we are told that the union had only 320 members. The expenses of advertising their label were heavy, and it was claimed that members of this trade paid higher dues, were more heavily assessed, and earned less wages than any other trade. All the unions represented in the Council were requested to adopt measures to have the cigarmakers' union label placed in each member's hat, so that he would be reminded of his obligation to assist his fellow trade-unionist, when purchasing cigars.[10]

The Shoemakers' White Labor League directed their energies to the preparation of public exhibitions of goods made by their members, and to inducing public institutions to withhold pa-

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who, by any imprint, label, trade-mark, tag, stamp, or other inscription or device, placed or impressed upon such article, or upon the cask, box, case, or package containing the same, misrepresents or falsely states the kind, character, or nature of the labor employed or used, or the extent of the labor employed or used, or the number or kind of persons exclusively employed or used, or that a particular or distinctive class or character of laborers was wholly and exclusively employed, when in fact another class, or character, or distinction of laborers was used or employed either jointly or in any way wise supplementary to such exclusive class, character, or distinction of laborers, in the production or manufacture of the article to which such imprint, label, trade-mark, tag, stamp, or other inscription or device is affixed, or upon the cask, box, case, or package containing the same, is guilty of a misdemeanor, and punishable with a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than ninety days, or both. (*Statutes of California and Amendments to the Codes*, 1905, p. 669.)

[9] We have found one copy of *The Cigarmakers' Appeal* published in 1880. It gives a long list of retail grocers who have agreed to handle only white-labor goods. It publishes the minutes of the meeting of the Cigarmakers' Union and also of the Trades Assembly. 5940 labels had been issued by the committee since the previous meeting of the Union.

In 1886 the cigarmakers and the printers joined in the publication of *The Pacific Coast Boycotter*. *The White Labor Herald* was the organ of the cigarmakers in 1889. See article "Labor Papers of the Pacific Coast," by Ira Cross, in *Labor Clarion* for June 5, 1908.

[10] Minutes of the Federated Trades Council in *Coast Seamen's Journal*, August 6, 1890.

tronage from firms employing Chinese labor. Their efforts seem to have been quite successful, for in November, 1887, their representative reports that the demand for white-labor goods is so great at present that the factories are running day and night to supply the orders.[11]

In the meeting of the Federated Trades of December 12, 1890, Delegate Mullen, of the Shoemakers' Union, reported that his union was in favor of adopting a universal label, to be used on all trade-union products.[12] This idea has been advocated from time to time by different members of the San Francisco central body, but has never met with favor, as it is doubtful whether the trade-mark laws could be invoked for the protection of such a label.

USE OF THE LABEL BY THE PRINTING TRADES.

Although adopting the label at a later period, the printing trades have been most successful in its use. An attempt was made in 1890 to have a "union imprint" adopted,[13] but the motion failed to obtain the necessary majority. In February, 1896, the matter was again brought before the Typographical Union by Henry Marsden, the President of the Bookbinders' Union, who urged the importance of adopting a label for the Allied Printing Trades.[14] The committee which was appointed to confer with the different unions on the subject, brought in a favorable report at the March meeting of the union, and the motion to adopt the label was carried.[15]

There was, at first, great irregularity in the use of the label. In August, five months after its adoption, a delegate from the Allied Printing Trades Council reported that sixty-seven counterfeit labels had been found. To guard against this evil it was decided to require that, whenever the label was used, the imprint of the office must also appear.[16]

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[11] Minutes of Federated Trades Council in *Coast Seamen's Journal*, November 9, 1887.

[12] *Ibid.*, December 17, 1890.

[13] Minutes of the Typographical Union, December 28, 1890.

[14] *Ibid.*, February 26, 1896.

[15] March 25, 1896.

[16] Minutes of the Typographical Union, October 25, 1896.

UNION LABELS ON PUBLIC PRINTING.

Evidently, the printers pressed the use of their label quite energetically. In October, 1896,[17] it was reported that the efforts to have the city printing bear the union label had met with a favorable response, but it was not until the meeting of March, 1897,[18] that it was finally reported that the Board of Supervisors had adopted a resolution to the effect that all city printing must be done in offices entitled to use the union label. In the minutes for April 25, 1897, we find the following extract: "The label has had quite a boom lately. By observation you will see it on most all of the theatrical, picnic, and other amusement printing. It also appears in numerous jobs done for the City and County. As a whole it is becoming more generally used. During the coming month a circular will be sent to all the fraternal and secret societies explaining the objects of the label and requesting them to have the label on their printing."

Two lawsuits have grown out of the refusal of the supervisors to award the city printing to firms not entitled to the use of the label. The Charter of the City and County of San Francisco provides that contracts for printing and other supplies shall be made with the lowest bidder offering adequate security,[19] but it also contains a clause to the effect that when the supervisors believe that the public interest will be subserved thereby, they may reject any and all bids and cause the notice for proposals to be re-advertised.[20] In response to an advertisement calling for sealed proposals for furnishing certain printed forms and blanks for the use of the city, the Stanley-Taylor Company submitted the lowest bid. Their proposal conformed to the rules of the board and was accompanied with a properly certified check. But owing to the fact that this was a non-union firm, it was claimed that the board would refuse to award them the contract, and so an action was brought which sought to enjoin the supervisors from awarding the contract to any other person or firm.

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[17] Minutes of the Typographical Union, October 25, 1896.

[18] *Ibid.*, March 22, 1897.

[19] Charter of the City and County of San Francisco, Art. II, Chap. III, Sec. 1.

[20] *Ibid.*, Sec. 5.

The case was carried to the Supreme Court, where it was decided in favor of the defendants. It was held that the Board of Supervisors are a quasi-judicial body whose duties are prescribed by statute. If they should let the contract in violation of the charter, such contract would be void. But the board had not yet acted when this suit was brought; and the court declared that it cannot be presumed that a public officer elected by the people and sworn to perform his duty faithfully and to the best of his ability, is going to disregard his oath and willfully violate the law.[21]

Soon after this first suit was filed in the San Francisco Superior Court, the Board of Supervisors took action in the matter of awarding the contracts. The supervisors exercised their right to reject all bids on the ground that public policy demanded that such action be taken. They then awarded the printing to union firms submitting proposals at the figures offered in their bids, claiming that there was not time to re-advertise as the printed matter was required for immediate use.

The Stanley-Taylor Company then applied to the Superior Court for a writ of mandate to stop this action. Judge Murasky refused to grant this writ, whereupon the case was appealed to the Supreme Court, which affirmed the decision of the lower court, quoting with approval a large part of Judge Murasky's opinion. The courts held that, "Where the law intended a subordinate body to be the final arbiter of any question, vesting such body with discretion to determine the matter, and making its judgment absolute, the writ of mandate will not lie to divest or mold or otherwise interfere with such discretion." It was declared that, since the supervisors had jurisdiction to decide the matter, their judgment was not subject to the control of the courts. "Were the Court to interfere, it might substitute its belief and its judgment for the belief and judgment of the Board, a result that our system does not contemplate. The writ of mandate will lie to correct illegal but not capricious acts.''[22]

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[21] *Barto* v. *Supervisors of the City and County of San Francisco*, 135 Cal. 494.

The trade-unions regarded these decisions as a great victory for the union label, which has continued to adorn all the public printing of the city.

DECISIONS RECOGNIZING THE VALIDITY OF THE LABEL LAW.

The third label case which the printers carried to a successful issue, if not so materially beneficial, was no less gratifying to the trade-unionists. The Citizens' Alliance, an organization of the opponents of the trade-unions, was the primary instigator of many of the labor cases brought before the courts during this period. Among other trade-union practices, the extensive use of the printers' label was attacked. On May 11, 1904, the following circular was issued by Herbert George, the executive officer of the Alliance:

> ''To Our Members:
>
> The obnoxious and offensive display of union labels is ——— to all liberty-loving and law-abiding Americans, and they resent the insolence. The zeal displayed by the typographical union in placing their label on all printed matter has led us to adopt a similar label (notice stamp in upper left-hand corner of this circular). It is not our plan to advocate its use. We simply offer it to enable our members to demand its use when the other label is forced upon them.
>
> ''The City and County printing is decorated with the union label. As citizens and taxpayers let us demand the use of our label in conjunction with the other label, if labels must be used. Possibly both sides will then agree to leave off their labels entirely, and let the public printing appear like the printing of other American states that do not advertise their slavery to the union by the use of labels of any kind.
>
> ''In this connection we wish to enlist your assistance to get rid of union signs in barber shops, bootblack stands and other business places. Their display is an evidence of tyranny on the part of the unions. Ask your bootblack if he shines shoes of only union men, ask your barber if he caters only to union trade. While these signs are offensively displayed, it gives courage to those who believe in the tyrannical methods of the walking delegate. In other states we have completely eradicated them by following the course above suggested. Might I ask you to assist?
>
> ''Another thing we wish to call to your attention; an institution calling itself the Union Directory Company is seeking to list firms employing 'union men' and those who are 'friendly to unions.' I consider it only another scheme to impose on our members and to make my task harder to perform.
>
> ''It is safe to turn down all propositions of this sort and we urge upon all members to decline donations to labor picnics, and things of that sort, for the present.''
>
> (Signed by President Herbert George.)[23]

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[22] *Stanley-Taylor Co.* v. *Supervisors of the City and County of San Francisco*, 135 Cal. 488.

[23] The circular was published as a part of facts in the case.

The Typographical Union promptly brought suit for an injunction, restraining the Citizens' Alliance from making use of their imitation label. In his decision, Judge Sloss held that the section of the Political Code[24] providing for the protection of trade-union labels was constitutional, and that the use of the label proposed in the circular was an infringement on the rights of the Typographical Union. He granted an injunction restraining the Citizens' Alliance from causing their counterfeit label to be imprinted on any book, circular, card, newspaper, or other printed matter, and from disposing of any printed matter bearing such an imitation of the printers' label.[25]

The cigarmakers have also won several suits brought in defense of their label. In 1893 they secured an injunction restraining Mattheas and Company from the further use of an imitation of the label of the Cigarmakers' Union. Ten years later this firm was caught selling about five hundred cigars made by non-union labor, and put up in boxes to which were affixed a false and fraudulent imitation of the cigarmakers' label. The union at once instituted contempt proceedings for the violation of the injunction order of 1893. The defendant firm was found guilty and fined $150.[26]

The California trade-unionists are gradually coming to realize that in the union label they have found their most effective means of securing the closed shop. The San Francisco Labor Council has a standing committee which devotes itself to devising means for promoting the demand for the labels of the organizations which it represents. The number of unions adopting this means of identifying the work of their members have multiplied until it is difficult, even for a person familiar with the labor movement, to recognize all the labels now in use. The Labor Council has followed the example of the American Federation of Labor in issuing a label calendar which displays in colors the large array of union labels which it behooves all loyal members to demand when purchasing goods.

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[24] Political Code, 3200.

[25] *French (Typographical Union) v. Citizens' Alliance;* Case No. 90847, Superior Court, City and County of San Francisco.

[26] *Burns et al. (Cigarmakers' Union) v. Mattheas & Co.;* Case No. 39578, Superior Court, City and County of San Francisco.

CHAPTER XIX.

JUDICIAL RESTRAINT OF THE ACTIONS OF TRADE-UNIONS.

In California we have two periods of marked development of judicial restraint of trade-union activities. Naturally these occur at the times of greatest aggressiveness on the part of the labor organizations. The first period was in 1889 to 1891, when, through the efforts of the Federated Trades Council, the California unions were closely affiliated, and were stimulated to energetic efforts for the perfecting of the organization of the different trades, and for the improvement of the conditions of work. It is at this time that we find the first extensive use of the boycott for the purpose of coercing individual employers. In both San Francisco and Sacramento efforts were made to find ways of restraining the activities of the labor organizations. The attempts to pass anti-boycott ordinances and laws were unsuccessful, but the courts responded with the first injunctions restraining the officers and members of trade-unions.

In our sketch of the San Francisco labor movement, we have given the history of the successful efforts of the Employers' Association of 1891-2 to disrupt the unions, and of the period of inactivity which followed. The great revival of trade-union organization in 1897 to 1901 made possible a renewal of the energetic efforts to improve the conditions of work, and this resulted in the courts being again called upon to find means of restraining their activities. Between 1901 and 1906 the use of the injunction in the San Francisco labor controversies was rapidly developed, until at the present time there remains but a narrow range of trade-union activity which the courts recognize as lawful.

CASES GROWING OUT OF THE ENFORCEMENT OF TRADE-UNION RULES AGAINST FELLOW-WORKMEN.

While the assistance of the courts has been most frequently invoked by the employers, there has also been a small number of cases in which members of the organizations have sought relief from trade-union discipline, or where non-union workmen have claimed the protection of the courts.

The first case in which trade-union procedure was brought before a California court occurred as early as 1862. The printers of the San Francisco Typographical Union issued a boycott or blacklist circular, which was adorned with a large rat, and which made known the fact that six members had been expelled from the union because they were working for less than the established rate. Immediately after the circular was issued the offending members were given an interest in the paper on which they worked, so that, as part proprietors, they would be exempt from the rules of the union. The paper then brought several suits for libel, not against the Typographical Union, but against the firm that had printed the offending circular. The complaint in the first of these cases claimed that the reputation of the plaintiff had been damaged to the extent of $20,000. In his instructions to the jury the judge made the interesting point that, if the circular was of the nature of a privileged paper such as lodges or secret societies send to give information about bad members, then it could not be considered a libel.[1] The jury was unable to agree in the first case, but in the second awarded damages of $199, with instructions that the plaintiff pay the costs of the suit.[2]

Another case where relief from the discipline of the trade-union was sought in the courts occurred in 1884. Three members of the San Francisco Journeyman Tailors' Protective Union declined to go on strike with the fourteen fellow-workers of their shop. When the difficulty was settled, these members were expelled from the union, and found themselves without prospects of employment. One of them brought suit to compel reinstatement. Judge Hunt, who tried the case, decided that there was no cause for action. He regarded the union as a voluntary benevolent society, and declared that when a member of such an organization is expelled, he must first exhaust all the remedies provided by the constitution and by-laws of the association before coming into court.[3]

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[1] *Bulletin*, November 4, 1862.

[2] *Ibid.*, November 6, 7, 10, 1862.

[3] *Alta*, September 30, 1884.

Two weeks later the order of expulsion was rescinded, but the offending members were re-admitted only that they might be subjected to a formal trial on a charge of conspiracy to injure the society and its members. They were tried by the central body, or executive committee of the union, and again expelled. Whereupon August Otto once more appealed to the court for redress. The Superior Court granted a writ of mandate commanding his re-instatement, and the union appealed from this judgment to the Supreme Court.

Here the whole question of the right of a fraternal organization to expel members, and the conditions under which the actions of such societies would be reviewed in a court of justice, were fully discussed. It was held that "The right of expulsion from associations of this character may be based and upheld upon two grounds: (1) A violation of such of the established rules of the association as have been subscribed or assented to by the members, and as provide expulsion for such violation. (2) For such conduct as clearly violates the fundamental objects of the association, and if persisted in and allowed would thwart those objects or bring the association into disrepute."[4]

When the society acts in conformity with its rules in good faith, then the sentence is conclusive. The courts have no right to interfere with such decisions except in the following cases: "(1) If the decision arrived at was contrary to natural justice, such as the member complained of, not having an opportunity to explain misconduct. (2) If the rules of the club have not been observed. (3) If the action of the club was malicious, and not *bona fide*."[5]

When these rulings were applied to the facts of this particular case, it was found to be subject to the review of the court. It was shown that in the constitution of the Journeymen Tailors' Union the penalty provided for continuing work with parties against whom a strike had been declared was not expulsion, but a fine of not less than ten or more than one hundred dollars. The plaintiff was guilty of no other offense than that for which he was expelled in the first place; the charge of a "conspiracy to injure and destroy the union" was but a pretext to punish him for an offense which should have made him subject to a fine. The court characterized the trial and conviction of the plaintiff as "a travesty upon justice, and lacking in the essential elements of fairness, good faith, and candor, which should characterize the actions of men in passing upon the right of their fellowmen."[6] The judgment ordering the re-instatement of the plaintiff was affirmed.

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[4] *Otto v. Journeymen Tailors' Protective and Benevolent Union of San Francisco*, 75 Cal. 314.

[5] Herschl on Law of Fraternities, quoted in *Otto v. Tailors Protective and Benevolent Union*, 75 Cal. 314-5.

In 1904 another case occurred in which Judge Hebbard of the San Francisco Superior Court held that one George Dingwell, a member of the Street Carmen's Union, had been unlawfully expelled. As in the earlier case, the action of the union was reviewed by the court because the expulsion was upon a charge not provided for in the constitution or by-laws of the association.[7]

The question of the right of trade-union members to procure the discharge of non-union workmen by refusing to work in the same shop has also been brought before the California courts several times. A case of this kind which attracted much attention, and was spoken of at the time as the first decision on the legality of the boycott, occurred in connection with the ironmolders' strike in 1888. The activities of members of the trade-unions at this time had led to a number of arrests, but the Le Boeuf case differed from the others in that it presented the single question of the legality of trade-union methods, without any extraneous considerations of force or violence, or trespass. The plaintiff, Le Boeuf, was a member of the Ironmolders' Union who had been suspended for violation of its rules, and found himself unable to obtain work because of the refusal of other members of the union to remain in any shop where he was employed. He brought suit against the union, claiming $25,000 damages for an alleged conspiracy to prevent him from obtaining employment.

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[6] *Otto v. Tailors' Protective and Benevolent Union*, 75 Cal. 316.

[7] A similar case was *Grand Grove v. Garibaldi Grove*, 130 Cal. 116. A report of the Street Carmen's case can be found in the *Labor Clarion*, March 4, 1904, p. 8. Dingwall was charged with conspiracy against the officers of the union.

Judge Maguire, who first heard the case in the San Francisco Superior Court, decided that there was no cause for action. He asserted that "a conspiracy to do a lawful act by lawful means, or to do an act not in itself unlawful by means not in themselves unlawful, can never constitute an actionable conspiracy."[8] This first ruling of a California court on an alleged trade-union conspiracy did not escape severe criticism. The editor of the *Post* declared, "It should have been obvious that Judge Maguire is the last person to whom such a case should have been assigned, especially in the present nebulous state of the law on that subject. Judge Maguire is an honest man, but there are two subjects on which he is afflicted with monomania. Those are the questions of land and labor. . . . We do not consider that Judge Maguire has properly stated even such a law as exists on this subject."[9]

But on retrial in the Superior Court, Judge Garber fully sustained the former decision. By an argument which emphasized strongly the individual freedom of contract, he reached the same conclusion announced by Judge Maguire. The main points made were: (1) It was admitted upon the argument that no law could control a man in selecting the character of the labor that he would perform or the person in whose company he would labor. (2) This means that a man may not only select his own vocation, but in plying it he may exercise the right arbitrarily to refuse to work except under his own prescribed conditions. This right is not denied to him, nor is it denied even though the conditions prescribed by him be unreasonable, still it is a question of his own solution whether he will employ himself or remain in employ when his demands are not complied with. In this case the defendant contends that the observance of the union rule was no more than the exercise of a legal right. (3) That which one man may lawfully do can be lawfully done by any number of men.[10]

Ten years later a similar case was tried in the San Francisco

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[8] The case is reported and discussed in the *Coast Seamen's Journal*, June 16, 1888.

[9] *Evening Post*, May 29, 1888.

[10] *Alta*, September 30, 1890. See also *Pacific Union Printer*, October, 1890, and *Coast Seamen's Journal*, October 8, 1890.

Superior Court. One Hess, a linotype machinist employed by the *Bulletin*, was refused admission to the Typographical Union on the ground that he had not served an apprenticeship of five years in the printing trades, and was therefore ineligible for membership. However, he continued to hold his position without opposition from the union members of the office up to the time when he was granted a vacation by the proprietor of the *Bulletin*. He went to Alaska expecting to remain there if he found suitable employment, and the union at once exercised its right to fill vacancies by securing the appointment of one of its members to the place. When Hess returned a month later, the union members of the office refused to permit him to go to work again. Owing to this refusal to work with him, he found it impossible to secure a position elsewhere. He therefore brought suit against the union claiming $25,000 damages, and asking for a restraining order to prevent the defendant intimidating or threatening the *Bulletin* or any other newspaper, printing office, or person, with a boycott if they employed him.[11]

Judge Daingerfield, who tried the case, instructed the jury that, (1) "Merely to persuade a person to break his contract cannot be wrongful in law or fact, but if the persuasion be used for the purpose of injuring the employer or employee, it is a wrongful act and actionable if injury actually results from it. Every man has a right to employ his labor free from the dictation of others and if two or more persons join to force his choice in their behalf, it is an unlawful conspiracy, whether the means employed be actual violence or intimidation by threats.

"(2) Members of trade-unions may contract with an employer in advance that he shall employ none but union labor, but they cannot lawfully interfere with pre-existing contracts between employer and employee with the object of compelling the employer to discharge such employee.

"(3) Whenever a person by intimidation procures the breach of contract or the discharge of a person from employment, which but for such interference would be continued, he is liable to damages.

"(4) Members of trade-unions have the right to say that they will not work for persons who do not belong to their organizations, and they have the right to secure employment for their members if they do not interfere with a lawful pre-existing contract. If union men refuse to work in an office because merely an employee there is not a member of their union, it is lawful for them to do so, unless it is their intent to have this result in the discharge of this employee.''[18]

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[11] Case No. 62417, Superior Court, City and County of San Francisco.

The jury returned a verdict awarding $1200 damages. The union at once took steps to appeal the case to the Supreme Court, but before the time set for the hearing in that court the dispute was compromised and the plaintiff decided to drop the case.

The instructions given the jury by Judge Daingerfield embodied a principle that had not before been applied to California trade-union disputes. If fully enforced one of the commonest trade-union practices would be rendered unlawful. The decision refused to concede that the injury incident to all trade competition may also be legitimate when bargaining for the sale of labor. In other words, a trade-union would not be permitted to act for the benefit of its members when such action injured their competitors. A member once employed would have no cause to fear expulsion from the union, if the courts would not permit his fellow-workmen to procure his discharge by their refusal to work with him. A full recognition of the principle would completely undermine trade-union discipline, and prohibit the use of the most effective means for procuring the closed shop. Needless to say, the verdict in the Hess case aroused much indignation among the trade-unionists.[19]

The opportunity for an effective protest came a little over a year later, when Judge Daingerfield was a candidate for re-election as judge of the Superior Court. The labor organizations, led by a committee from the Typographical Union, entered upon a systematic campaign to secure his defeat. The election was closely contested. It is evident that the feeling against Judge Daingerfield in the parts of the city where the workingmen voted was very bitter, and undoubtedly his defeat was due to their opposition.[14]

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[18] Case No. 62417, Superior Court, City and County of San Francisco. These reports of Superior Court cases were taken from the records in San Francisco prior to their destruction in the fire of 1906. The extracts were carefully made, but the author could not afterwards verify them by comparison with the original documents.

[19] *Voice of Labor*, February 4, 1899, p. 4. *Ibid.*, July 29, 1899.

Three years later this question of the right of trade-unions to prevent the employment of fellow-workmen by a combined refusal to work with them again came before the San Francisco courts. While nearly all the organizations of the building trades of the city were affiliated solely with the Building Trades Council, one local of the United Brotherhood of Carpenters and Joiners of America had, for many years, also maintained its membership in the Labor Council which is chartered by the American Federation of Labor. The Building Trades Council announces its policy in the following terms: "The Building Trades Council controls the building industry from the foundation to the roof exclusively and it will tolerate no interference from any miscellaneous central body or organization. Unions in the Building Trades Council must be organized and guided solely by the Building Trades Council, and by this Council only. The Building Trades Council will not and cannot divide responsibility with any central body made up of different trades and callings." In accordance with this policy, an amendment to the constitution was adopted to the effect that no labor organization, under the control of or obeying orders from any central labor body which has members who are engaged in other work than the building industry exclusively, could become a member of the Building trades Council, or send delegates thereto.

At the time this resolution was passed the carpenters' union in question was a member of both the Building Trades and the San Francisco Labor Council. When forced to a choice, it decided to relinquish the membership in the Building Trades Council. The members of the union were no longer able to obtain the working card of the Building Trades Council, and so the workmen who were affiliated with that body refused to stay on any job where the members of this carpenters' union were employed. As this resulted in their loss of employment, a suit was brought for damages and for an injunction to restrain the Building Trades Council from continuing the boycott.[15]

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[14] *Organized Labor*, October 13, 20, 27; November 3, 10, 1900.

[15] *Cole et al. v. McCarthy, Building Trades Council et al.*; case No. 90044, Superior Court, City and County of San Francisco. Decided May 22, 1902.

In the decision the court held that the Sherman Act did not apply to restraints and monopolies of this kind, and that, if it did, then only the federal courts had jurisdiction. As further grounds for refusing the injunction, Judge Seawell declared, "While the regulations and acts of defendant, intended as they are, and tending as they do to secure for itself a monopoly of the building industry in San Francisco, are against public policy, they are not, merely for that reason, the subject of judicial restraint. Agreements made for the purpose of creating a monopoly are against public policy and void, but they are not illegal in any other sense than that the law will not enforce them. In the eye of the law a void contract is no contract at all. An injunction restraining defendants from refusing to work on the same jobs with plaintiffs would be, in effect, a command requiring them to work. A court of equity cannot compel the performance of personal services. The fact that the acts done are malicious makes no difference in the law."[16]

In another dispute between a member of the Master Mason's Association and the Bricklayers' Union, Judge Seawell rendered a decision which seems to imply that, under some circumstances, the courts might intervene to prevent an attempt to compel members of a union to obey strike orders. Of the alleged menace of trade-union rules, he says: "If a member of a labor union affiliated with the Building Trades Council works upon a job which has been declared unfair by competent authority, notice will be given the union by the Council and such union will thereupon fine or expel such member. It is contended that the rules of the unions in reference to the discipline of an offending member operate as a menace by which all the members of the unions are intimidated from working for plaintiffs, and that defendants should be enjoined from enforcing such rules. This court has no power to set aside the rules and by-laws of any labor organization upon the ground that cases may possibly arise in which their enforcement may operate injuriously upon persons who are not members of it. It should appear that some member of the union is at work and threatened with punishment by the union in case he continues work and who, but for such threats, would be willing to continue work."[17]

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[16] *Cole et al. v. McCarthy;* Case No. 80044, Superior Court, City and County of San Francisco.

It will be seen from this review of the decisions on the right of trade-unions to cause the discharge of non-union workmen, that the courts started with the assumption that a combination of men could lawfully do what one man could do, and that so long as the act was one which was recognized as lawful, the intent to injure a fellow-workman, or the actual damage which he might suffer, would not be recognized as subjects of legal action. In the later decisions it is recognized that under some circumstances judicial restraint is justifiable, but as yet the courts have developed no clearly defined, consistent policy in deciding just where legitimate trade-competition ends and malicious persecution begins. The extent to which the decision depends on the individual point of view of the judge is shown by the radical difference between the rulings of Judge Daingerfield and those of other judges trying similar issues.

THE BOYCOTT BEFORE THE CALIFORNIA COURTS.

During the early period of the California labor movement frequent attempts were made to prevent the public patronage of the products of Chinese labor. As early as 1862 we find the cigarmakers urging the public to refrain from buying cigars made by the Chinese, and at a later date the shoemakers were also active in their efforts against their Chinese competitors. But the first general systematic boycott of Chinese products seems to have been that attempted by the San Francisco Trades Assembly in 1882. As has been pointed out, the boycott was unsuccessful and its leaders were arrested.[18] When the president of the Assembly came before the court he was acquitted, but the boycott was soon abandoned.

In our history of the San Francisco labor movement we have shown the great activity of the Federated Trades Council in the period between 1886 and 1891, and have presented typical incidents illustrating the extensive development of the boycott as a means of inducing the concessions in wages and conditions of work demanded of the employers at that time. The effectiveness of the new and aggressive policy adopted by the trade-unionists was quickly realized, and the employers soon began seeking means of defense. Their first appeals to the courts brought them but little assistance. As early as 1887, members of the Furniture Makers' Union were arrested for distributing boycott circulars, and the officers of the Federated Trades Council were also brought into court on a charge of criminal libel. We find the Council appealing to the unions which it represented for funds to enable it to employ the best available counsel for the defense of what were spoken of as "the boycott cases." The charges were dismissed, thus leaving the unions free to press the boycotts then in force, and to declare new ones.

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[17] *Butcher v. Building Trades Council et al.;* Case No. 64018, Superior Court, City and County of San Francisco.

[18] See the chapter on the San Francisco Labor Movement, p. 41, note 110.

The trade-unionists continued to make an extensive use of this new and effective weapon. The Council had a special boycott committee, whose chairman gave his entire time to devising ways of advertising the boycotts, and to the discovery of customers of the objectionable firms. At the labor convention held in December, 1888, a new plan was proposed for making the boycotts more effective.[19] Business centers where the various trades were most influential were located, and each union was then held responsible for the prosecution of the boycott in the portion of the city assigned it. Among the groups of workers who profited by the vigorous enforcement of the boycotts were the brewery workers, the cooks and waiters, the barbers, the retail clerks, candy-makers, box-factory workers, the cigarmakers, coal miners of a certain firm in British Columbia, and the ironmolders. In time the Federated Trades Council realized the dangers of a hasty and ill-advised use of this powerful weapon, and passed rules for its stricter regulation.[20]

After failing in their first appeal to the courts, the employers tried to find other means of combating the boycotts. Repeated attempts were made to induce the supervisors to pass ordinances declaring boycotting illegal.[21] These were unsuccessful, probably because of a realization of a lack of authority for such legislation. Many of the boycotts were prosecuted by the distribution of handbills, and an effort was made to deal with the subject by passing an ordinance forbidding all such distribution.[22] Though a number of arrests were made for the violation of this ordinance, it does not seem to have been effective as a means for preventing the continuation of the boycotts.[23]

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[19] *Coast Seamen's Journal*, December 26, 1888.

[20] Minutes of the Federated Trades for November 27 and December 11, 1891, in *Coast Seamen's Journal.*

[21] Minutes of the Federated Trades Council for November 28, 1890, in *Coast Seamen's Journal*, December 13, 1890.

It remained for a Sacramento judge to put an effective weapon in the hands of the boycotted employers by issuing the first injunction in a California labor dispute. The striking printers of the *Sacramento Bee* were conducting a vigorous boycott of the paper, with the assistance of members of the Federated Trades Council, who were sent to Sacramento to give advice about the conducting of the boycott. For its more effective promotion, a little paper called the *Trade Union* was issued for the purpose of presenting the cause of the strikers to the public. Judge Armstrong, of the Superior Court, granted an injunction forbidding the boycotters from doing any of the acts complained of as injurious to their former employers. The order included in the forbidden acts all advertising of the boycott in the newspaper or printed circular.[24]

Judge Armstrong's decision, which attracted much attention, was based on the common law and on provisions of the California Political and Civil Codes. He argued, (1) that every person is bound to abstain from the injury of the person or property of another, or from infringing on his rights;[25] (2) that the good-will of a business is property;[26] (3) that the defendants were responsible for all injuries due to their willful acts.[27] The defendants claimed the right to speak and print what they wished under the State Constitution, but the Constitution also held them responsible for the abuse of that right.[28] Since the defendants were insolvent and could not pay damages, they must be restrained by injunction, otherwise the plaintiffs would not be safe-guarded in their right of acquiring, possessing, or protecting their property, guaranteed in the Constitution.[29]

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[22] *Alta*, December 3, 1890, p. 8, report of meeting of the Board of Supervisors.

[23] Minutes of Federated Trades Council in *Coast Seamen's Journal*, March 13, June 3, 1891; January 8, 1892.

[24] *Alta*, November 20, 1890; *Coast Seamen's Journal*, November 26, 1890.

[25] *Civil Code*, Sec. 1708.

[26] *Ibid.*, Secs. 992, 655, 663.

[27] *Ibid.*, Sec. 1714.

[28] In a recent Supreme Court decision it was held that this section of the Constitution would prevent an injunction restraining freedom of speech, but that the person exercising this right could be punished for its abuse. *Daily* v. *Superior Court*, 112 Cal. 94.

The injunction does not seem to have abated the zeal of the boycotters. The Sacramento Federation of Trades held a mass meeting and made plans to carry the decision to the Supreme Court, and to start a rival evening paper.[30] Six of the more active of the trade-unionists, among them G. W. McKay, the president of the Federated Trades Council of San Francisco, were soon brought to trial for the violation of the injunction. The president of the Typographical Union, the manager of the *Trade Union*, the boycott paper, and his assistant were found guilty of the violation of the injunction, and fined twenty dollars each.[31] Three months later the printers were still prosecuting the boycott, and had appealed the case to the Supreme Court.[32] We have been unable to find any report of a decision in this court, so it is probable that, as in so many other cases of this kind, the controversy was settled and the case withdrawn.

The San Francisco employers hastened to make use of this new remedy. We have found but scanty records of these cases, as no attempt was made to carry them to the Supreme Court. In the meeting of the Federated Trades Council of November 28, 1890, the shoe clerks reported that they had been victorious in the contempt cases against their members. In June, 1891, the officers of the Council were enjoined from boycotting one Westerfield.[33]

At about this time the Employers' Association was organized in San Francisco, and the campaign which it conducted against the unions proved so successful that, by the end of 1892, there was no longer any need of injunctions to protect the business of the employers. As the San Francisco organizations had led in planning the more aggressive policies, there was a general decline in trade-union activity. The economic depression that prevailed in 1893-4 also discouraged all efforts to improve the conditions of work. These circumstances explain the absence of injunction cases in the California courts during a period when the use of this means of restraining boycotts and strikes was being rapidly developed in the Eastern states.

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[29] *Alta*, November 20, 1890.

[30] Minutes of the Federated Trades Council of November 28, reported in *Coast Seamen's Journal* of December 3.

[31] *Alta*, December 14, 1890.

[32] *Pacific Union Printer*, January and February, 1891.

[33] Minutes of the Federated Trades Council, November 28, 1890, and June 5, 1891, in *Coast Seamen's Journal*, December 3, 1890, and June 18, 1891.

THE DEVELOPMENT OF THE USE OF THE INJUNCTION IN LABOR CONTROVERSIES IN OTHER PARTS OF THE UNITED STATES, 1888-1900.

In order to appreciate fully the significance of the later period of development of the use of the injunction by the California courts, it will be necessary to review some of the precedents set between 1888 and 1900 by the courts of Eastern states and by the federal courts. We find that the California experiences with the boycott, leading up to the issuance of the first injunction in a labor dispute, were being duplicated in other sections of the country. In 1888 the Supreme Court of Massachusetts held that, banners displayed in front of a person's premises with inscriptions calculated to injure his business and to deter workmen from entering into or continuing in his employment constitute a nuisance which equity will restrain by injunction.[34] In the same year a Pennsylvania court enjoined a boycott which showed many of the tactics which had been adopted by the San Francisco labor organizations in their controversies with the Wellington Coal Company, and with certain breweries and bakeries. The defendants were restrained from requesting others to boycott the plaintiff, from threatening to boycott those who patronized him, from following his wagons through the streets and requesting the public to boycott him.[35]

On the other hand, in 1890 there were several decisions in which the courts of different states refused to enjoin the publication of boycott circulars and letters, or to prevent a newspaper from advising workmen to break their contracts of employment. It was declared that there were adequate remedies at law for the circulation of libelous statements,[36] and that the publications which led the employees to violate their contracts did not come within the common-law prohibition of the enticement of servants.[37]

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[34] *Sherry* v. *Perkins* (1888), 147 Mass. 212, 214.

[35] *Brace* v. *Evans* (1888), 5 Pa. Co. Ct. R. 163.

In 1891 a decision was rendered in the United States Circuit Court of the Southern District of Ohio which completely abandoned this more conservative point of view. This was a case similar to the one which had called forth the first injunction restraining a California trade-union. The decision sustained the issuance of an injunction quite as radical in its terms as the one which had aroused the indignation of the Sacramento printers. The court granted an injunction prohibiting the publication and circulation of posters, handbills, circulars, etc., printed and circulated in pursuance of a combination or conspiracy to boycott.[38]

In the period between 1891 and 1900, during which the injunction was rarely used to restrain the California trade-unions, many radical precedents were set in the courts of Eastern states, among the most important of which were the following:

(1) The Pennsylvania Supreme Court sustained an injunction in 1893 which restrained striking employees and persons sympathizing with them from gathering at and about the plaintiff's place of business, from following the workmen whom he employed to and from their work, from gathering at and about the boarding places of said workmen, and from any and all manner of threats, menaces, intimidations, opprobrious epithets, ridicule, and annoyance to and against said workmen or any of them, for or on account of their working for the plaintiffs.[39]

(2) In 1894 a New Jersey court enjoined the Essex Trades Council from issuing circulars calling upon members of the unions and the public to cease patronizing a certain newspaper that was boycotted because it used stereotyped or plate matter.[40]

(3) A Massachusetts court refused to permit a patrol of

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[36] *Mayer* v. *Journeymen Stone-cutters' Association* (1890), 47 N. J. Eq. (2 Dick.) 519.

[37] *Rogers* v. *Evarts*, 17 N. Y. Supp. 264 (1891).

[38] *Casey* v. *Cinn. Typo. Union No. 3*, 45 Fed. 135; 12 L. R. A. 193.

[39] *Murdock* v. *Walker*, 152 Pa. St. 595.

[40] *Barr* v. *Essex Trade Council*, 53 N. J. Eq. 101.

nen for the purpose of persuading workmen from entering the employment of the complainant who was granted an ction for the protection of his business against strikers.[41]

1) The courts repeatedly decided that acts which threat- irreparable or continuing injury to property would be ned, even though such acts were also punishable as crimes. lecisions regarded business as property.[42]

5) Mere persuasion to abandon employment, unaccompanied reats or acts of intimidation, was enjoined.[43]

5) In other cases the rulings where the circumstances were ar were the reverse of those already cited: the courts re- to intervene to prevent the sending of boycott circulars plaintiff's customers,[44] or to prohibit the use of the streets isplaying malicious placards,[45] or to forbid the inducing of , by entreaty and persuasion, to leave their employment.[46]

is evident from this brief summary, that the decisions in ate courts of the East and Middle West during this period a rapid development of the use of the injunction to re- the activities of labor organizations. Much of this de- ment was made possible by precedents set in the federal .

EDENTS FOR THE USE OF THE INJUNCTION SET BY THE FEDERAL COURTS.

the earlier federal court injunction cases, the more rad- lepartures from former well-recognized limitations in the f the writ of injunction were justified by the claim that were necessary to protect property in the hands of receiv- who had been appointed by the court, or by the need of ting adequately the mails and interstate commerce. Some se decisions made such unprecedented use of these special

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Vegelahn v. Guntner, 167 Mass. 92. See also *Wick China Co. v. Brown*, . St. 449.

Perkins v. Rogg, 28 Wkly. Law Bul. 32; *Davis v. Zimmerman*, 36 N. Y. 303; *Hamilton Brown Shoe Co. v. Saxey*, 131 Mo. 212.

Beck v. Railway Teamsters' Protective Union, 77 N. W. 13; 42 L. R.

insheimer v. United Garment Workers of America, 77 Hun. 215; 28 Supp. 321.

Riggs v. Cinn. Waiters' Union, 5 Ohio N. P. 386.

Reynolds v. Everett, 144 N. Y. 189.

judicial prerogatives that not only the general public, but many members of the legal profession raised a cry of "government by injunction," charging the judiciary with attempting to usurp the powers of legislation.

As early as 1885, we find cases where members of trade-unions were convicted of contempt of court for interference with the operation or property of railroads in the hands of receivers.[47] In one of these cases a request to quit work with a mere show of force was held to be contempt, and three men were punished by terms of imprisonment of ten days, thirty days, and four months respectively.[48]

The injunction issued in 1894 on behalf of the receivers of the Northern Pacific is one of the most extreme instances of this assumption of extraordinary judicial powers. The officers, agents, and employees of the receivers and all persons, associations, and combinations were restrained from interference with the property or operation of the railroad which stretched through some four thousand four hundred miles of territory. The court also undertook to prevent some 12,000 employees from "combining and conspiring to quit, with or without notice, the service of said receivers with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property or to prevent or hinder the operation of the railroad."[49]

The decision of the Circuit Court sustaining this injunction was appealed to the United States Circuit Court of Appeals, where the section of the injunction compelling the involuntary servitude of the employees was declared to be in violation of the Constitution. The unquestionable right to quit work, either singly or in combination, was clearly stated by Justice Harlan. He says in his opinion: "The rule, we think, is without exception that equity will not compel the actual performance by an employee of merely personal service, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him. That even if the quitting were in breach of contract, the injured party has merely his action for damages, but that equitable relief by injunction against the breach has always been regarded as impracticable. That the peaceful but concerted combination of workmen to withdraw from an employment on account of a reduction in wages, even if amounting to a strike, is not illegal.'"[50]

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[47] *In re Doolittle*, 23 Fed. Rep. 544.

[48] *U. S.* v. *Kane*, 23 Fed. Rep. 748.

[49] *Farmers' Loan and Trust Co.* v. *N. Pacific Railroad Co.*, 60 Fed. Rep. 803. For completer discussion, see the article by C. N. Gregory, *Har. Law Rev.*, Vol. II, p. 495.

The Toledo, Ann Arbor and North Michigan Railroad Co. v. Pennsylvania Co.[51] is another famous case where a federal court injunction was sought to assist in the operation of a railroad in the hands of receivers. Among the forbidden acts specified in the injunction were the following:

(1) Eight railroad systems were restrained from refusing to take freight from the complainant, because of their fear that their union employees would strike if they handled such freight.

(2) The court undertook to compel the president of the Locomotive Engineers to rescind his order requiring members to refuse such freight, and to prevent him sending out such directions.

(3) While engineers might withdraw from service rather than handle such freight, any refusal to do so while still retaining their positions would render them liable to punishment for contempt of court.

About a year later, this last point was given still wider application in a California case growing out of the great strike against the use of the Pullman cars. Members of the American Railway Union employed by the Southern California Railway Company refused to handle the Pullman cars, at the same time continuing to perform their other duties. There was an existing valid contract compelling the railroad to attach Pullman cars to its trains, and the complaint averred that the refusal to handle the cars subjected the company to a multiplicity of suits, and irreparable damages. Justice Ross, of the United

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[50] *Arthur v. Oakes*, 63 Fed. Rep. 310.

[51] *Toledo, etc., v. Pa. Co.*, 54 Fed. Rep. 730. This was the first case under the Interstate Commerce Act. It was decided in 1893.

States Circuit Court of the Southern District of California, at the conclusion of his argument announced, "I shall award an injunction requiring the defendants to perform all their regular and accustomed duties so long as they remain in the employment of the complainant company, which injunction, it may be well to state, will be strictly and rigidly enforced."[52]

The great Pullman strike resulted in a number of injunction cases in other parts of the United States. The officers of the American Railway Union were charged with a conspiracy to obstruct the transportation of the mails and to interfere with interstate commerce.[53] The sweeping injunction directed against Debs and other officers of the Union, "and all persons combining and conspiring with them, and all persons whosoever," commanded among other things, that they desist and refrain: "(1) From in any way or manner interfering with, hindering, obstructing, or stopping any of the business of any of the following named railroads." . . .

"(7) From compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employees of any of the said railroads to refuse or fail to perform any of their duties as employees of any of said railroads in connection with the interstate business or commerce of said railroads, or the carriage of the United States mail. . . ."[54] Not only were Debs and other officers specified convicted for the violation of this injunction, but in two cases it was held to be binding as against persons not named in the bill.[55]

Among other instances showing the development of the use of the injunction in the federal courts during this period were the following:

(1) In 1892 the Miners' Union of Warden was restrained from trespassing upon the property of the Coeur d'Alene Mining Co.[56]

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[52] *Southern California Railroad Co. v. Rutherford*, 62 Fed. Rep. 796.

[53] *U. S. v. Debs*, 64 Fed. Rep. 726.

[54] *Ibid.*, pp. 726-7.

[55] *U. S. v. Agler*, 62 Fed. Rep. 824. *U. S. v. Elliott*, 64 Fed. Rep. 27.

[56] *Coeur d'Alene Consolidated and Mining Co. v. Miners' Union of Warden*, 51 Fed. Rep. 260. Decided in 1892.

(2) The draymen of New Orleans were ordered to refrain from instituting a general strike on the ground that it was an interference with interstate commerce.[57]

(3) Members of the Stevedores' Union were enjoined to prevent them from compelling the employment of none but members of their organization in the loading and unloading of a vessel.[58]

(4) The federal courts have repeatedly held that crimes may be enjoined when they threaten a continuing injury to property.[59]

(5) A show of force, without any deeds of violence, has not only been enjoined, but also punished as contempt because declared to be in violation of an order of non-interference with employees who are protected by an injunction.[60]

(6) A peaceful boycott of barrels made by machinery and child-labor was enjoined.[61]

CALIFORNIA INJUNCTION CASES, 1899-1907.

During this period when the use of the injunction to restrain the activities of labor organizations was developing so rapidly in other sections of the United States, the courts of California do not seem to have been called upon to render similar services. Between 1891 and 1900, we have found but one instance where an injunction was issued in a controversy of this kind. This was the case of *Davitt v. American Bakers' Union*[62] which was appealed to the Supreme Court, and decided in 1899.

The bakers had for some time been making determined efforts to improve the wretched conditions of their trade. These activities had resulted in the arrest of some of their members in 1890-1891. This union appears to have quickly recovered from the depression due to the vigorous attacks of the Employers' Association, for in 1896 we find them again employing the aggressive tactics which were so common in the boycotts of 1888 to 1890. The bakers were trying to secure a ten-hour day, exemption from work on one day of the week, and the privilege of sleeping at home instead of at the place of employment.[63] The firm of Daly and Davitt refused to accede to their demands, and secured an injunction restraining the members of the union and other persons from interfering with the business of the firm, particularly by sending out circulars which were alleged to contain false and defamatory statements.

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[57] *U. S. v. Workingmen's Amalgamated Council of New Orleans*, 54 Fed. Rep. 994. Decided under the Anti-Trust Act of 1890.

[58] *Elder v. Whitesides*, 72 Fed. Rep. 724.

[59] *Consolidated Steel and Iron Co. v. Murray*, 80 Fed. Rep. 811.

[60] *Mackall v. Ratchford*, 82 Fed. Rep. 41.

[61] *Oxley Stave Co. v. Coopers' International Union of N. A.*, 72 Fed. Rep. 695. This summary of cases is taken largely from the article on "Government by Injunction," by C. N. Gregory, *Harvard Law Review*, Vol. II, pp. 492-501.

[62] *Davitt v. Am. Bakers' Union*, 124 Cal. 99.

When the case was appealed to the Supreme Court, Judge Garoutte refused to sustain the action of the lower court in issuing the injunction on the ground that the complaint was improperly drawn, in that it dealt with generalities throughout, and contained no statement of specific facts upon which relief was sought. He declared that, "Inferences, generalities, presumptions, and conclusions have no place in such a pleading. Conceding the formation of a conspiracy is charged, having for its object a common design and purpose, still we find no statement in the bill as to any specific overt acts done by defendants in pursuance of that design or purpose. . . .

"The allegations as to the acts of defendants in printing and circulating false publications is somewhat more specific than anything else we find in the pleading, yet that allegation is not broad enough. The substance at least of these publications and circulars should have been set out in the pleading."[64]

Although decided on purely technical grounds, this verdict was regarded as a victory for organized labor.[65]

In May, 1900, Rehfisch, Kutz & Co., a San Francisco firm engaged in manufacturing shoes, obtained a temporary injunction from Judge Seawell of the Superior Court. By it the striking employees of the firm were restrained from maintaining a patrol in front of or near the premises, from interfering with its employees and attempting to compel them to leave its employ, and from trying to prevent new workers from entering the plaintiff's employ.[66] The case was dismissed three months later, as the firm soon settled the controversy and agreed to unionize the shop.

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[63] *Pacific Union Printer*, November, 1896.

[64] *Davitt v. American Bakers' Union*, 124 Cal. 99.

[65] *Voice of Labor*, April 1, 1899.

In the 1901 session of the state legislature, the first attempt was made to pass a law restricting the use of the injunction in labor disputes. The bill was presented with the endorsement of the newly organized State Federation of Labor. Evidently, the measure was suggested by the efforts of the American Federation of Labor to secure the passage of a similar federal statute, and by fears for the future, rather than by the need of correcting existing abuses. The bill failed to pass largely because the judiciary committee of both houses claimed that there was a lack of evidence of any marked use of the injunction by the California courts.[67] This argument was no longer valid when the bill was again presented two years later, for the San Francisco courts had been repeatedly called upon to restrain the activities of trade-unions during the many industrial conflicts of this period.

The injunction has been most frequently invoked in San Francisco to curb the activities of two different groups of workers,—the employees of restaurants, and the retail clerks. Waiters and clerks cannot hope to win better conditions of work by gaining control of the available supply of employees in their business, for inexperienced hands are quickly trained to take their places. To win concessions, it is necessary to appeal to the public for support, as only a fear of loss of business will induce the obdurate employer to grant the better conditions demanded by the workers. By means of the membership cards and buttons, the union store or restaurant card, and, in special cases, by fines for the failure to observe boycotts, it is possible to control the patronage of the large number of persons who are members of the trade-unions, but some other form of appeal is necessary to influence the general public. Hence the noisy patrol in front of the place of business, the sandwich man with his placards setting forth the demand for reasonable hours and a day of rest, and other efforts to persuade customers to withdraw their trade.

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[66] *Rehfisch v. Galway et al.*; Case No. 72504, Superior Court, City and County of San Francisco.

[67] Editor Macarthur's Views, *San Francisco Chronicle*, July 27, 1901, p. 2.

The first important case of this period was decided in July, 1901, while the great teamsters' strike was in progress.[68] It is interesting not only because of the insight it affords of the objects and methods of the hotel and restaurant employees' union, against whom many injunctions have been issued,[69] but also because, for the first time since the *Sacramento Bee* case of 1889, the whole question of the terms of such an injunction under the California laws was carefully argued.

The Cooks' and Waiters' Alliance was engaged at this time in a vigorous effort to unionize the restaurants of the city. Its officers sought to have the proprietors sign an agreement which would entitle the restaurant to the use of the union house card. This agreement provided that each employee should have one day, or twenty-four hours, free time each week. The maximum working day was set at ten hours for the waiters, and twelve hours for the cooks and kitchen subordinates. All the employees were classified and a minimum wage scale provided. Overtime was to be paid for, and when no extra man was provided for the off man, the remaining men who divided his work must receive extra pay. From twenty minutes to half an hour was to be allowed for meals. Both parties were to observe the agreement for one year, an arbitration plan being provided for the settlement of any disputes that might arise.

Mathias Johnson, the proprietor of two large restaurants, refused to sign this agreement, with consequences which he set forth in his complaint as follows: "Defendants requested the patrons of the plaintiff not to deal with him, declaring that he was an enemy to labor, was 'unfair' and kept 'unfair' places of business. Defendants solicited plaintiff's employees to leave him, which a number of them did; and caused men to be picketed in front of his restaurants and march up and down and call out in loud and threatening tones to passers-by and customers of plaintiff not to patronize him because he was 'unfair' and kept an 'unfair' house. Large crowds were gathered, and the doorways into the restaurants were so blocked as to make ingress into the restaurants difficult for the customers. Processions of men were organized by the defendants to carry banners on which were inscribed notices not to deal with the plaintiff; and men were caused to walk in front of the restaurants bearing placards inscribed: 'Don't patronize Johnson's Creamerie. It is a non-union house. Six days a week is long enough for any restaurant employee to work. Help us with our fight for a day's rest and a shorter workday by patronizing houses with the union label.' Defendant further caused several labor organizations to pass resolutions forbidding its members from patronizing plaintiff under penalty of fines or expulsion.'"[70]

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[68] *Johnson v. Hotel and Restaurant Employees et al.;* Case No. 76769, Superior Court, City and County of San Francisco. See also *San Francisco Chronicle*, July 27, 1901.

[69] At a recent meeting of the Labor Council a representative of the Waiters' Union declared that no less than twenty-nine injunctions were issued against the waiters at this time, but that nevertheless the waiters found ways to continue their appeals to the public.

In his decision Judge Sloss started with the assumption that the acts of the defendants, in so far as they were unlawful, might be enjoined, even though they were also punishable as crimes. His argument was devoted to the question of whether the acts complained of were unlawful. The right to leave the employ of the plaintiff, either individually or in a body, was unquestionable. On the other hand, "it is an actionable wrong for persons by means of violence, threats of violence, intimidation or defamatory statements, to induce workmen to leave the employ of their master, or to prevent others from entering such employ, or to prevent a trader's customers from dealing with him. In other words, the use of means, that are *per se* unlawful, for the accomplishment of any purpose that results in damage to one, gives him a cause of action against the person committing the unlawful act."

Aside from the question of violence or intimidation, the mere persuasion of an employee to leave was unlawful under the section of the Civil Code[71] which forbade the enticement of a servant from his master. The law not only required that requests to cease to patronize the plaintiff should not be made in a way that implied a threat, but also the definition of "slander"[72] in the California Code precluded the use of the term "unfair" or "unfair house."[73]

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[70] *Johnson v. Hotel and Restaurant Employees et al.*; Case No. 76769, Superior Court, City and County of San Francisco.

[71] *Civic Code*, Sec. 49. This was repealed in 1903.

After designating these obviously unlawful acts which should be enjoined, the judge then entered upon a careful analysis of the question of whether the unions should also be restrained from peacefully persuading persons not to deal with the plaintiff or enter his employ. He pointed out that in a case of a maliciously induced ejectment from a hotel, the Supreme Court of California had decided that no action could be brought against a person who persuaded another to violate his contract. The decision went to the length of asserting that if the man had a right to do the act damaging another, the fact that he was actuated by malice or other improper motive would not convert the lawful into an unlawful act. This had also been the rule of the court in the much-discussed English decision of *Allen* v. *Flood.*

Judge Sloss was not disposed to concede that this rule is not also applicable to a combination of persons, though he recognized that motive is not always immaterial. He was disposed to follow Justice Holmes' argument in *Vegelahn* v. *Gunter,*[74] and declared that the purpose of defendants was not "to coerce plaintiff to submit his business to defendant's control," but to gain shorter hours, better wages, and more opportunities for employment of the members of their Union.

In seeking the latter object, the defendants merely endeavored to obtain economic advantages for themselves to the exclusion of others,—an object common to all forms of economic competition. In the case of traders, this right to combine for the purpose of limiting trade in a given branch to themselves, to the damage of rival traders, had been fully recognized by the courts.[75] The federal court decisions declaring peaceful boycotts unlawful were not reconcilable in principle with the decisions granting this right to traders, and, in the conflict of authority, the judge considered the latter cases to have been correctly decided.

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[72] *Civic Code,* Sec. 46.

[73] In accordance with the Supreme Court decision in *Daily* v. *Superior Court,* 112 Cal. 94, Judge Sloss afterwards declared that this part of his decision was erroneous. (*Cohn* v. *Retail Clerks' International Protective Association.*)

[74] *Vegelahn* v. *Guntner,* 167 Mass. 107. This was a dissenting opinion.

[75] *Mogul Steamship Co.* v. *McGregor,* English Appeal Cases, 1892, p. 25.

The defendants were accordingly restrained "from persuading or inducing persons in the employ of the plaintiff to leave his employ, from intimidating by threats, expressed or implied, of violence or physical harm to body or property, any person or persons from entering into the employ of the plaintiff, or from dealing with or patronizing the plaintiff; from preventing or attempting to prevent, by the use of the word 'unfair' or any other false or defamatory word or words, statement or statements, oral or written, any person or persons from entering into the employ of the plaintiff, or from dealing with or patronizing the plaintiff."[76]

Two years later Judge Sloss declared that the part of his decision enjoining the use of the term "unfair" was erroneous, as the California Supreme Court had decided that, owing to the explicit provision of the State Constitution guaranteeing freedom of speech, "The right of the citizen to freely speak, write, or publish his sentiments is unlimited, but he is responsible at the hands of the law for the abuse of that right."[77]

There were several other less important injunction cases in 1901. In February and March, Judge Dunne of the San Francisco Superior Court granted temporary injunctions restraining the Retail Clerks' Union from interfering in any manner with the business of certain proprietors of men's furnishing stores, or with their customers, and from picketing and congregating in front of the stores, from wearing badges, carrying banners, or making outcries to passers-by.[78] In both cases the motion of the attorney for the defendant striking out certain material portions of the complaint was granted, and, as the plaintiffs' attorneys neglected to amend the complaints, the cases were dismissed seven or eight months later.

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[76] *Johnson v. Restaurant Employees et al.;* Case No. 76769, Superior Court, City and County of San Francisco.

[77] *Daily v. Superior Court,* 112 Cal. 94, 97, decided in March, 1896. Art. I, Sec. 9, of the California Constitution: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; ano no law shall be passed to restrain or abridge the liberty of speech or of the press."

[78] *Gibson v. Retail Clerks' Union et al.;* Case No. 75466. *Wolf v. Retail Clerks' Union;* Case No. 75617, Superior Court, San Francisco.

In October and November of 1901, the Superior Court of San Francisco granted two temporary injunctions restraining the activities of the Bakers' Union in a controversy they were having with a large bakery and restaurant.[79] In one of these cases Judge Troutt granted an injunction *pendente lite* on January 13, 1902, which restrained defendants from boycotting plaintiffs, and from calling on or seeking out the customers of plaintiffs and threatening them into ceasing to do business with plaintiffs; from maintaining pickets in front of plaintiffs' place of business and displaying banners announcing to the public that plaintiffs were working their bakers seven days a week, or that they intended to work their bakers seven days a week; and from posting placards announcing to the public that plaintiffs worked their employees seven days a week, or from making any other false and defamatory statements intended to injure the plaintiffs' business. The defendants were further restrained from combining and conspiring together to prevent plaintiffs from carrying on their business, and from attempting to injure their business by threats of violence.[80] The plaintiffs swore to a complaint charging defendants with a willful violation of this injunction, but, on the settlement of the difficulties between the contending parties, the injunctions were allowed to lapse, and the cases of contempt seem to have been dropped.

It will be seen by a comparison of these two decisions that Judge Troutt enjoined the same actions which had been declared legal by Judge Sloss. It is true that the terms used in describing the actions vary with the point of view of the judges. The efforts to induce the customers to withdraw their patronage are described as "persuading" in one case, and as "threatening" in the other; what one judge regards as combined action to promote the welfare of members of the union, the other holds to be

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[79] *Ruediger et al.* v. *Bakers' Union et al.;* Case No. 78387, Superior Court, City and County of San Francisco. *Weber* v. *Bakers' Union*, Local No. 24; Case No. 78387, Superior Court, City and County of San Francisco.

[80] See report and criticism of the decision in the *San Francisco Examiner*, January 15, 1902.

"combining and conspiring together to prevent plaintiffs from carrying on their lawful business." Though inconsistent with California decisions, Judge Troutt's injunction was not more radical in its terms than many that had been granted by the courts of Eastern states.

In November, 1902, this rapid development of judicial restraint of trade-union activities culminated in an injunction which not only went further than any that had previously been issued by the California courts, but was also as drastic in its terms as the most radical of the injunctions issued by judges of the other states.[81] This injunction was also unique in that it was procured in the name of the non-union men who were taking the places of the striking employees. Judge Buckles, who granted the injunction, sat with Judge Armstrong when the latter decided the first injunction case of this kind to come before the California courts, and in the twelve years that had elapsed since the *Sacramento Bee* case had been decided, he had evidently retained his faith in the power of the courts to deal with labor controversies.

The injunction issued November 14 was a temporary one, with directions to show cause why it should not be made permanent on December 8. By it the members of the Leather Workers' Union were restrained "from in any manner interfering with or preventing the plaintiffs, or any of them, from working for Kullman, Salz and Co., a corporation, and from following their usual vocations in the employ of said corporation; and also restraining the said defendants, and each of them, from interfering with the plaintiffs, or any of them, in any manner, way, or form, while engaged in said employment, or at any other time or times, or at any other place or places, and restraining said defendants, and each of them, from using towards plaintiffs, or any of them, threats, intimidations, persuasions, or force; and from endeavoring to prevent the plaintiffs, or any of them, from continuing such service in the employ of said corporation; and restraining said defendants, and each of them and their associates, from gathering on the streets of the city of Benicia, in said county of Solano, in the vicinity of the tannery of said corporation, or along the approaches adjacent thereto, for the purpose of intimidating or persuading the plaintiffs or any of them, into leaving the employ of said corporation; and from picketing or patrolling said tannery, or streets, or approaches thereto, and also from going, either singly, or collectively, to the houses or places of sojourn of the plaintiffs, or any of them, for the purpose of inducing them, by threats or intimidations, or otherwise, to leave said corporation's service, or in any way to intimidate the wives or families of said plaintiffs, or any of them, on the said streets of the said city of Benicia, with threats, or intimidation, or violent language; and from in any manner depriving or attempting to deprive said plaintiffs, or any of them, in the pursuit of their ordinary avocations, of peace and quiet."

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[81] *Labor Clarion*, November 21, 1902.

The terms of this injunction, particularly the parts restraining the strikers from peaceful persuasion, and from gathering in the streets, were severely criticized. The protests were not confined to the vigorous denunciations of the labor papers, but were also voiced by other more disinterested representatives of the public press. The sympathy for the strikers was augmented by a disorderly and unprovoked outbreak of their non-union competitors, in which an old citizen of Benicia, who was in no way connected with the labor controversy, was killed, and several other persons were seriously injured.

When, in the latter part of December, Judge Buckles finally heard the arguments in the case, he took occasion to remark upon the attacks on his honor and integrity as a judge, and, in answer to the severe criticisms of the terms of the injunction, declared that, had an application been made for a modification, it would have been granted, as there was no intention that it should deprive the tanners of their constitutional right of peaceful assembly in the streets. He decided that there was no cause for continuing the injunction.[83]

ANTI-INJUNCTION LEGISLATION.

As the time for the meeting of the legislature approached, the labor organizations felt that it could no longer be claimed that a law restricting the use of the injunction by California courts was unnecessary. The San Francisco Labor Council and the State Federation of Labor prepared to make a vigorous effort for the passage of the two measures that were proposed for this purpose. Judge Sloss' decision had suggested the need of repealing the part of the Civil Code which forbade the enticement of a servant from his master.[33] The American Federation of Labor bill "to limit the meaning of the word 'conspiracy,' and also the use of 'restraining orders' and 'injunctions' as applied to disputes between employers and employees," was again introduced.

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[83] *Labor Clarion*, December 26, 1902. *Organized Labor*, January 3, 1903.

The second of these bills which called forth many lengthy and heated debates, read as follows: "No agreement, combination or contract, by or between two or more persons to do or procure to be done any act in contemplation or furtherance of any trade dispute between employers and employees in the State of California, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein expected, any person guilty of conspiracy, for which punishment is now provided by any act of the Legislature, but such act of the Legislature shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained."

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[33] This section of the Civil Code read as follows:

Sec. 49. The rights of personal relations forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, *or of a servant from his master.*

3. The seduction of a wife, daughter, orphan sister, or servant.

4. Any injury to a servant which affects his ability to serve his master.

It was proposed to omit the clause in italics, as it was claimed that this provision was a remnant of the earlier personal relationship between master and servant, and out of harmony with the modern purely contractual status of the employee. This act failed of passage in 1903, but was enacted in 1905. See *Statutes of California and Amendments to the Codes*, 1905, p. 58.

Grove L. Johnson, the chairman of the Assembly Judiciary Committee, undertook to introduce this bill, with the understanding that he might amend it if he found it best to do so. The cooks and waiters of a hotel within a block of the State Capitol were then conducting a boycott in a manner that seemed offensive to many members of the legislature. Johnson said that at first he had intended to introduce the bill without change,[84] but that the actions of these men suggested the need of amending the bill by adding the proviso: "That nothing in this act shall be construed to authorize the use of force, violence, or intimidation."

The bill, with this amendment, was reported favorably from the committee. The representatives of the San Francisco Labor Council[85] who were in charge of the labor bills obtained legal advice upon the possible effects of the amendment to the bill. They were assured that it was immaterial to its substance and that it in no way vitiated or modified its terms. After consulting with the executive committee of the Labor Council, it was determined to make an attempt to have the proviso stricken out. But Macarthur's efforts in the judiciary committee were unsuccessful, and he and Wisler decided that, since the amendment had been declared harmless by able lawyers, it was better to accept it than to endanger the whole bill, and so announced their willingness, on behalf of the Labor Council, to do so.

In the lengthy debates on the floor of the Assembly, the proviso was vigorously attacked.[86] The phrase "or intimidation" was most objectionable, because it was declared that the courts would give the term so broad an interpretation that the force of the law would be destroyed.[87] Finally the motion of

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[84] *San Francisco Examiner*, February 5, 1903, p. 1.

[85] Walter Macarthur and R. I. Wisler were the representatives of the Labor Council in Sacramento at this time.

[86] *Examiner*, February 5, 1903. *Labor Clarion*, February 13, 1903.

[87] That their fears were well founded is shown by the following extract from Judge Beatty's opinion in a recent federal court case. In speaking of a boycott notice he said, "That is not anything apparently oppressive at first sight. It is simply calling attention to the fact that these parties are using the beer; but what is the design of it and what is the result of it? Why it is to intimidate these people or prevent them from dealing in complainants' beer. That far it is oppressive of the business of complainant and tends to destroy its business. There is no question about that, in so far as it would intimidate these people. It

Assemblyman Copus, one of the members elected by the Union Labor party, to strike out this objectionable phrase, was carried by a vote of 38 to 25. The bill was returned to the committee, where it was agreed to substitute the words, "or threats thereof." After another lengthy debate the amendment which now read, "Provided, that nothing in this Act shall be construed to authorize the use of force, violence, or threats thereof,"[88] was finally adopted.

The fate of this bill was awaited with keen interest by the members of trades-unions throughout the state. While the debates were in progress, the Los Angeles labor organizations adopted resolutions expressing their disapproval of all efforts to amend the original bill.[89] The San Francisco Labor Council also adopted resolutions in favor of the passage of the bill without the objectionable phrase "or intimidation."[90] The Republican members of the legislature, realizing that they would be held responsible for the fate of the bill, and fearing a split in their ranks, went into caucus for its discussion, and appointed a "steering committee" for the labor legislation.[91] The prolonged debates so delayed the passage of the measure that it would probably have died on the files, but for the fact that Assemblyman Walker of San José had it placed on the special urgency file. During the last days of the session it was hurried through the Senate, and received the Governor's approval on March 21.[92]

INJUNCTION CASES SUBSEQUENT TO THE PASSAGE OF THE RESTRAINING ACT.

For over a year after the passage of this act, there were no important injunction cases in the state courts.[93] But in 1904

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must be remembered that there are many timid people in this world who would be much influenced by danger of even small losses." (*Seattle Brewing Co. v. Hansen*, 144 Fed. Rep. 1014.)

[88] *Labor Clarion*, February 20, 1903.

[89] *Examiner*, February 12, 1903.

[90] *Labor Clarion*, February 13, 1903.

[91] *Examiner*, February 10, 1903.

[92] *Labor Clarion*, March 13, 1903. See also March 27, for final report on the bills.

[93] Several unimportant cases were allowed to lapse: *Gentili v. Waiters' Union*, Local No. 30, Case No. 87835; *Novelty Theatre v. Actors' Union*, Case No. 88890; *Pundt v. Cooks' Union*, No. 44, Case No. 89941. All in the Superior Court, City and County of San Francisco.

the stablemen of San Francisco entered upon a vigorous campaign to unionize the livery stables of the city, and the resulting controversies soon brought the law before the courts. The first of these cases grew out of a strike due to the refusal of the proprietors of the Nevada Stables to discharge a non-union employee. New men were employed to take the places of the strikers on contracts to work for a definite period of time. The petition for the injunction charged that the defendants tried to force the new men to quit the employ of the plaintiffs by threats and acts of violence; that they waylaid and assaulted these new employees; that the pickets in front of the stable called out such expressions as, "This is a scab stable!" "When we catch you outside, we will finish you!" "We will get you yet!" "You will never get out of the stable alive!" "We will break you in half!" etc. It was also charged that the patrol which marched in front of the stable in the evening often numbered as many as fifty men, and seriously obstructed the business of the stable; and that the agents of the union had sought out the customers of the stable and threatened them with boycott if they did not withdraw their business from the plaintiff.[94]

As a result of these acts, the plaintiff averred that he was harassed and annoyed, his business was injured, he lost several customers, and was unable to hire out his hacks and road vehicles for lack of drivers, and was compelled to send twelve of his horses to the country. He accordingly brought action to obtain an injunction restraining the Stablemen's Union from continuing the boycott.

In the decision Judge Hunt devoted his argument to the single question of whether the injunction was the proper remedy. In answering the defendant's claim that the plaintiff should seek redress in a criminal proceeding or in a civil action for damages, he pointed out that a wrongful act may be either a public offense or a private injury, but in respect to remedial consequences may be both; that is, the state may punish a wrong-doer by imprisonment, but that circumstance in no wise impairs the civil remedy of the aggrieved party.[95]

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[94] *Pierce* v. *Stablemen's Union;* Case No. 91122, Superior Court, City and County of San Francisco.

[95] *Labor Clarion*, August 12, 1904, p. 2.

The Penal Code afforded the plaintiff no remedy for the loss of business sustained, nor could he look for a civil action for redress. Two or three hundred of the six hundred members of the Stablemen's Union had participated in the boycott, so that an attempt to hold them responsible for the injury would involve a multiplicity of suits against impecunious defendants.

Judge Hunt attacked the doctrine that it is lawful for many to do what one person may do. He pointed out that an act may be unlawful without being a crime, for one is a private injury and the other is a public offense. Moreover, "The law recognizes the potency of numbers; it is numbers which is an inseparable element in conspiracy, combinations, or unlawful assemblies. The threat which, if uttered by one, might be innocuous, if uttered by many may well serve to intimidate." He claimed that the defendants' acts were unlawful, and that the act of 1903 did not sanction a combination to accomplish unlawful acts.

He declared that in so far as the recent act attempted to deprive the courts of equity of the power to issue injunctions in trade disputes, it was unconstitutional. First, because it impaired the right of "Acquiring, possessing, and protecting property," which had been guaranteed in the Constitution. The argument continues, "To deny the plaintiff equitable relief for the invasion of his rights and property is to deny him due process of law and to violate a fundamental principle of the Constitution of the State; for a right without a remedy is no right at all.

"Second, the provision in question is special legislation, inasmuch as it is not of uniform operation; under it litigants do not stand equal before the law . . . in matters of 'trade disputes,' it denies to employers an equitable remedy which it accords to the non-employing class. . . . The owner of real estate is entitled to an injunction against a trespasser whose acts threaten his possession; but, under this legislation, the man who owns a business, under like conditions, is denied like relief.

"Third, the provision in question is void because it seeks to deprive the Superior Court of a judicial prerogative conferred upon it by the Constitution. . . . If the Legislature can deprive a court of equity of the right to issue an injunction in a case like this, then it could deprive it of the right to issue an injunction in any case; it could absolutely divest the court of what is and always has been one of its most potent remedies, thus nullifying its powers and making impotent its decrees."[56]

The reasoning of this decision seems to imply that the Judge regarded a business, even though consisting largely of services that might be withdrawn at any time, as property in the sense that a piece of real estate is property, and as such, entitled to the same absolute legal protection. On the point of the right of the legislature to deprive the courts of their equity powers, the attorney for the union claimed that the Supreme Court of the state had always recognized the right of the legislature to prescribe remedies and procedure, and that the law did not deprive the employer of all remedies, but simply limited the form which these remedies should take.

Notwithstanding this adverse decision, the efforts to unionize the different stables were continued, and during the next two years injunctions were issued in several other cases where the stablemen attempted to enforce their demands by boycotts.[57] One of these injunction cases was appealed to the Supreme Court,[58] but before reviewing this decision, we will consider another important Superior Court case.

In August, 1905, Judge Murasky handed down an opinion with a decision granting a perpetual injunction restraining the Cooks' Union from boycotting a certain restaurant. The decision differed in several important points from those that had preceded. While recognizing fully the right of employees to quit work either singly or in a body, with or without cause, and to persuade others to do so, he held the secondary boycott to be unlawful intimidation. His ruling on this point was as follows: . . . "equity will protect the employer from a malevolent conspiracy to destroy his property, and any combination which has for its purpose the destruction of his business by preventing its operation through the intimidation of those who deal with or work with him may be enjoined . . . the threat of a boycott against others who may deal with such a person, in order to compel them against their will to also refrain from patronizing or working with such person, is a species of intimidation."[99]

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[56] *Labor Clarion*, August 12, 1904. *Organized Labor*, August 13, 1904, p. 4.

[57] *Hayes Valley Stables* v. *Stablemen's Union*; Case No. 92135, Superior Court, City and County of San Francisco. Injunction restraining the boycott on the Arcade Stables, *Labor Clarion*, March 9, 1906.

[58] *Goldberg Bowen* v. *Stablemen's Union*, 86 Pac. Rep. 807, 149 Cal. 429.

The plaintiff had complained that at times there were as many as six pickets in front of his restaurant, though the defendant asserted that there had never been more than two, and that these had done nothing but stand on the outer edge of the sidewalk and say, "Non-union house. Please don't patronize this restaurant." On the question of the right to use the streets for picketing, Judge Murasky quoted with approval from a New York decision to the effect that "A wayfarer upon the public streets should be free for public travel. No man against my will has the right to occupy the public street to arrest my course, be he ever so polite and gentle in his insistence. There may be no intimidation, yet an interruption of peaceful travel. There may be annoyance without danger."[100] In accordance with this view he held that "the maintenance of any obstruction in front of or in the vicinity of plaintiff's establishment for the purpose of working him an injury; the establishment of a systematic patrol in the neighborhood of his premises, the stationing of a picket with a badge or device, or bearing a banner, in front of or near plaintiff's store with a view to injure his business, or which has such results, is not such a use of the streets generally as is permitted by law to any one, for it may be what is denominated by the law as a private nuisance . . . the constant presence of one man advertising his purpose outside the door of a retail store or restaurant might constitute a most serious and potent private nuisance, as the term is understood in law."[101]

This decision which absolutely prohibited what the members of trade-unions regarded as a peaceful and lawful appeal for public support aroused much indignant criticism. A year later the San Francisco Labor Council passed resolutions calling upon "all members of organized labor and all citizens favoring the impartial administration of justice to work and vote with us to frustrate the election of Judge Murasky."[102] These efforts to prevent his re-election were not successful.

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[99] *Kosta v. Cooks' Union et al.;* Case No. 95461, Superior Court, City and County of San Francisco.

[100] *Mills v. U. S. Printing Co.,* 91 New York S. 185.

[101] *Kosta v. Cooks' Union et al.;* Case No. 95461, Superior Court, City and County of San Francisco.

This ruling of Judge Murasky's prohibiting all picketing of a boycotted place of business was fully sustained by a decision rendered in July, 1906, in the case appealed by the Stablemen's Union.[103] This is the first and only time that the California Supreme Court has ruled on the subject of what actions in a controversy of this kind are subject to judicial restraint, as the only previous case of this kind was dismissed because of a defective complaint.[104] The decision, which was written by Justice McFarland and concurred in by the other six judges of the court, was based entirely on the rulings in similar cases of the federal courts and the courts of Eastern states. It was held that the complaint clearly established the existence of a boycott, and the fact that the pickets and representatives of the union carrying placards and transparencies intimidated the patrons of the plaintiffs' business. "And such acts, having such effect, undoubtedly interfered with, and violated plaintiff's constitutional right to acquire, possess, defend, and enjoy property."

It was shown that, in the cases cited, the boycott had been repeatedly enjoined without reference to the means used to carry it into effect. The complainants were entitled to ask for the exercise of the restraining power of the court, first, because relief in damages to be recovered by an action at law was entirely inadequate; second, because the injury was continuing and irreparable, and not capable of admeasurement according to legal principles.

The argument that the injunction was forbidden by the California statute of 1903 was dismissed with the assertion that this law could not be construed as prohibiting the court from enjoining the main wrongful acts charged in the complaint, and if so construed was void, because violative of the constitutional right to acquire, possess, enjoy, and protect property.

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[102] *Labor Clarion*, October 19, 1906, Minutes of the Labor Council for October 12.

[103] *Goldberg Bowen Co. v. Stablemen's Union*, 149 Cal. 429, 432.

[104] *Davitt v. American Bakers' Union*, 124 Cal. 99.

It was agreed that the part of the judgment which forbade a mere expression of opinion at any time or place as to the plaintiff and his business should be amended,[168] but the injunction as finally confirmed restrained the union from "interfering with, or harassing, or obstructing plaintiff in the conduct of his business, . . . by causing any agent or agents, representative or representatives, or any picket or pickets, or any person or persons, to be stationed in front of or in the immediate vicinity of said place of business, with a placard or transparency having on it the words and figures as alleged in the complaint herein, or any placard or transparency . . . of similar import, and from, at said places of business, or in front thereof, or in the immediate vicinity thereof, by means of pickets or transparencies, or otherwise, threatening or intimidating any person or persons transacting or desiring to transact business with said plaintiff, or being employed at said place or places by the plaintiff."[169]

These five decisions rendered in the California courts between July, 1901, and July, 1906, show clearly the rapid development of judicial restraint of trade-union activities. The first of these decisions declared the enticement of a servant, and the use of such terms as "unfair" unlawful on the ground that they were forbidden in the Civil Code. Peaceful persuasion of customers or possible future employees was permitted. In 1905 the section of the Civil Code protecting from the enticement of his servant was repealed, and Judge Sloss also declared that, owing to a decision of the California Supreme Court which declared all restraint of freedom of speech unconstitutional, the enjoining of slander was erroneus.

The other decisions are founded on the assumption that a business is a property right, entitled to the protection of the courts. The general phrase "enjoined from all interference with the business of plaintiff," recurs frequently in the injunctions issued by the California courts. The specifications of the acts which the courts regard as unlawful interference vary from the use of force or violence, or threats of force or violence, to the mere giving of information by means of placards or word of mouth. In Judge Troutt's injunction it would seem that the "combining and conspiring together" is enjoined, and Judge Murasky is clearly of the opinion that the union pickets have no right to address any one on the street for the most polite and peaceful persuasion. Finally the Supreme Court, without attempting to argue the matter from the standpoint of previous California decisions, or existing statutes, declared the boycott to be an unlawful interference with property rights, and found ample precedents for enjoining all forms of picketing. This rapid development was promoted by the decisions in other parts of the country which we have already reviewed, and also by the fact that the California branches of the federal courts rendered decisions during this period which showed the more radical tendencies in the use of the injunction. Three important cases were decided in the United States Circuit Court of the Northern District of California, in each of which precedents were established for a restraint of trade-union activities such as had not hitherto been attempted in the state courts.

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[168] *Goldberg Bowen Co. v. Stablemen's Union*, Local No. 8760, 149 Cal. 429, 434-5.

[169] *Ibid.*, 435.

CALIFORNIA FEDERAL COURT INJUNCTION CASES.

Soon after the passage of the California law of 1903 restraining the issuance of injunctions in the state courts, several applications for such restraining orders were made to judges of the federal courts on the ground that the plaintiffs were residents of other states. The first of these cases, afterwards dismissed because the complainant failed to press the suit, arose out of the boycott of a certain rubber pad by the Journeymen Horseshoers' Union. The boycott was due to the fact that the proprietor of this pad had refused to unionize his horseshoeing shop in New York City. In granting an injunction *pendente lite*, Judge Beatty declared the boycott unlawful, and characterized the efforts of trade-unions to use it in the interests of their members as illegal monopolies. He said, "Whenever any organization, even for the benefit of its members, through its control over them by injunction or direction to them or its influence upon the public, and upon patrons, takes steps to prevent others from enjoying any lawful occupation in their labor or business, or attempts by concerted action to disparage the business or goods of another, or, in other words boycott said goods, it acts in violation of the law. If such can be done as to one man's trade and goods, it may be done as to another's, and so continue until all competitors are out of the way; thus entailing injury not only upon the individual but also upon the public. This is a monopoly of the worst character, and is most obnoxious to the law.''[107]

At about the same time two injunctions were granted restraining the activities of members of the Bag Workers' Union, who were then conducting strikes against two San Francisco firms.[108] In his decision on the Gulf Bag Company case, Justice Beatty conceded the right of peaceful persuasion, but claimed that in this case, though there was no direct evidence proving the defendants guilty, unlawful acts had been committed. He held that ''when any assemble in numbers for some object they must be held responsible for what their associates do, whether they approve of or advise it or not.'' The permanent injunction granted restrained the members of the Bag Makers' Union from all interference with the remaining employees of plaintiff, and from congregating and maintaining a picket or patrol in front of or in the immediate vicinity of plaintiff's factory for the purpose of molesting any person whatsoever, or of preventing any person whatsoever from obtaining free and unobstructed access to plaintiff's factory.[109]

In July, 1905, the question of the right of the California labor organizations to conduct a boycott in the interests of striking members of an Eastern trade-union again came before the federal court.[110] After citing the numerous decisions in which the boycott had been held to be unlawful, Judge Morrow considered the argument which, on the authority of the famous

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[107] *Hellman v. Storey et al.;* Case No. 13405, Circuit Court, Northern District of California. Filed June 9, 1903.

[108] *Gulf Bag Co. v. Suttner et al.;* Case No. 13412, 124 Fed. Rep. 467.

[109] *Ames and Harris v. Bag Workers' Union*, Case No. 13462.

[110] *Loewe et al. v. Cal. State Federation of Labor et al.*, 139 Fed. Rep. 71.

English case, *Allen* v. *Flood*, held that an act not in itself actionable does not become so because the motive is malicious or bad, or because it is done in combination with two or more persons. He pointed out that in a later English decision,[111] where the facts were similar to the case under consideration, such acts were held to be illegal and unjustifiable, "in that they were not performed in the line of legitimate trade competition, or for the purpose of advancing the interests of the workmen themselves, but for the sole purpose of injuring the plaintiff in his trade." He also cited a recent decision of Justice Holmes in the United States Supreme Court which declared that the liberty to combine to inflict injury upon another, even upon such intangibles as business or reputation, is not among the rights which the Fourteenth Amendment was intended to preserve, and the defense that motives are not actionable is true in determining what a man is bound to foresee, but not necessarily true in determining the extent to which he can justify harm which he has foreseen.[112]

The writ as granted enjoined all combining or conspiring together to injure the business of the plaintiff. Among the acts specifically forbidden were the publication, either orally or in writing, of statements calling attention to the strike in the complainants' factory, and all efforts to coerce or influence any person not to wear or deal in the hats manufactured by the complainant.[113]

A few months after the Loewe decision was rendered another similar case[114] came before the same court, growing out of the boycott of a certain brand of beer. Judge Beatty delivered the decision orally, without notes. Since 1892, when he issued the injunctions in the famous Coeur d'Alene cases, Judge Beatty's decisions have been among those showing the more radical tendencies in the development of judicial restraint of trade-union activities, so it is not surprising to find that this late decision marks another advance in the assertion of such powers.

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[111] *Quinn* v. *Leathem*, A. C. 1901, p. 495.

[112] *Aikens* v. *Wisconsin*, 195 U. S. 194.

[113] *Loewe* v. *California Federation of Labor*, 139 Fed. Rep. 71, 86.

[114] *Seattle Brewing and Malting Co.* v. *Hansen et al.*, 144 Fed. Rep. 1011.

The fundamental weakness of his somewhat haphazard discussion of the case in question seems to be due to a lack of appreciation of obvious economic principles. In a competitive system it is inevitable that in all economic contests one person or set of persons must profit at the expense of another. He concedes that it is commendable for the workingmen to strive to better their conditions, but demands that no one shall receive the slightest injury in this struggle to right wrongs or obtain a larger share in the profits of business, or more favorable conditions of work. He says of these efforts of trade unionists, "They must not undertake to accomplish what they desire to the injury or at the expense of other people, and there is where the mistake is too often made. It is conceded by all that they have the right to better their condition, but they must not do it in a way to be oppressive of others. I think that is what they have attempted to do in this case. Perhaps they have not so intended, but the question is as to the results of their acts. Beyond any question, what they are trying to do would be oppressive of the business of these complainants."[118]

Among the acts specified as unlawful interference with the business of complainants was the circulation of notices which merely stated that certain saloon keepers were handling the boycotted beer, because it was claimed that such notices would intimidate these people and prevent them dealing in the beer. He said, "It must be remembered that there are many timid people in this world, who would be much influenced by danger of even small losses. I have no doubt that many of these men who have this notice would fear that by continuing to engage in the selling of the beer there would be some loss to them, and that far it would hurt their business." Of the use of the term "unfair" he said, "Of course it does not say to the laboring people, 'You shall not drink' such beer, but it says: 'To Organized Labor and Friends: Don't use this beer!' These organizations, in the way they are trained, for they are as well trained as any military force, understand these rules and know what they mean. The very use of the term 'unfair' has a distinct meaning to them, and it is in the nature of a direction to the members of these organizations not to use that beer, and it is also an intimidation to those who are dealing in it." He considered that such notices tended to obstruct unfairly the business of the complainant, and that it was the duty of the court to restrain the defendants from "doing anything that will interfere with the complainant's business."[116]

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[118] *Seattle Brewing and Malting Co. v. Hansen*, 144 Fed. Rep. 1013.

The protectorate thus established was quite general in its character. The injunction was to be enforced against the members of the labor organizations and their associates without service of summons upon all of them. The judge directed that the writ of injunction should, in its terms, follow the precedent set in the case of *Loewe* v. *California State Federation of Labor*, and be directed to these organizations and then to different individuals named as members of the organizations, and also to include their attorneys, agents, employees, and all persons acting in aid of or in conjunction with them.

The more recent injunction issued by Judge Morrow in the case of the *Hammond Lumber Co.* v. *Sailors' Union of the Pacific et al.*[117] is less general in its application, yet the defendants are restrained not only from boarding the vessels of the plaintiff and from threats of bodily harm to his employees, but also from "in any wise interfering" with the crews or business of complainant. This case was appealed to the United States Circuit of Appeals, where the decision of the lower court in issuing the injunction was sustained. An unsuccessful attempt was made to have the decision reviewed in the United States Supreme Court on a writ of certiorari.

SUMMARY OF THE CALIFORNIA INJUNCTION CASES.

This review of the California decisions between 1901 and 1906 shows the remarkable and rapid development in the use of the injunction to restrain trade-union activities. The decisions strike at what is most fundamental in the labor movement, that is, the efforts to enlist numbers of workingmen in controversies with accumulated wealth. The actions enjoined are not generally those of the small group immediately concerned, but those which enlist the sympathy of the public, or of the larger group of organized workers, in support of some smaller body of trade-unionists.

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[116] *Seattle Brewing and Malting Co.*, 144 Fed. Rep. 1014.

[117] 149 *Fed. Rep.* 577; appealed, 208 *U. S.* 615.

The injunctions have been so general in their terms that it is easier to state the few remaining forms of trade-union activity which the courts still permit, than to attempt a summary of prohibited actions.

The efforts to enjoin the strike have been declared unconstitutional in the United States Supreme Court, so the right of the workman to quit work, whenever and for whatever cause he sees fit, has been fully established.

The right of peaceful persuasion is allowed, though the value of this concession is not great, since the means and opportunities for persuasion are held subject to injunction. The press furnishes the modern means of communication and persuasion, and its use in convincing the public, or even in notifying those already pledged to the support of their fellow-workers, has been repeatedly enjoined. The courts have also decided that oral persuasion must not take place on the public highway in the vicinity of the place of business concerned in the controversy. If properly introduced, and at a sufficient distance, it seems probable that this right may still be exercised.

The use of labels to advertise work done under good conditions, and their advertisement has not been enjoined.

This effort to restrain the activities of the California trade-unions has been purely judicial; the state legislature has repeatedly refused to pass measures for this purpose. We have already noticed the repeal of the section of the Civil Code which made the enticement of a servant unlawful, and the passage of the act of 1903 restraining the use of the injunction. In 1891 and again in 1905 vigorous efforts were made to pass anti-boycott laws. The first of these bills was endorsed by the Sacramento Chamber of Commerce,[118] and favored by many prominent San Francisco business men. A mass meeting was held in

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[118] *Alta*, February 13, 1891, p. 5.

San Francisco under the auspices of the Federated Trades Council to oppose the passage of the measure,[119] and a special representative was sent to Sacramento to assist in securing its defeat. The later bill was modeled on the Alabama anti-boycott law, and was supposed to have been presented through the efforts of the Citizens' Alliance. It was also defeated by the efforts of the labor organizations.

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[119] *Ibid.*, p. 8. Report of mass meeting. See also the report of the meeting of the Federated Trades Council, February 21.

CHAPTER XX.

REVIEW SUMMARY.

In the previous chapters of this book we have reviewed sixty years of the organized activities of the wage-workers of California in defense of what they have regarded as their economic rights and interests. Two conditions present to an unusual degree in California give this record peculiar interest: First, these organized efforts to protect and benefit the working classes have been made in an exceeding favorable environment; and second, employer and employee started with a more equal division of power than has ever been possible in the other great industrial centers of this country.

As one goes more carefully into the actual history of this important section of the American labor movement, its thoroughly democratic character becomes evident. The claim that these activities have been the product of the agitations of discontented, foreign—mostly Irish—demagogues is utterly superficial, and entirely unsupported by the facts of history. Leadership is of course necessary in any social movement, but the history of the efforts by which the labor laws were passed certainly proves that there has been no lack of activity and enthusiastic support on the part of the rank and file. Instances where the California trade-unionists have appeared fickle and ungrateful in their repudiation of once-powerful leaders indicate that their allegiance has been given to the cause rather than to the man representing it. It is hard to decide who among the early inhabitants of San Francisco were most entitled to be called foreigners. The newly arrived Americans from the other side of the continent no doubt felt that the native-born Spaniards or Mexicans were foreigners. The great rush for the gold fields brought people from every nation. The leadership of the labor movement has been, like that of other activities of the state, quite cosmopolitan. Among those who have been most influential we find native-born Americans, Englishmen, Scotchmen, Germans, Norwegians, and last, but by no means most important, the Irish.

The chief objects which the labor legislation of California has sought to promote have been:

1. The prevention of race associations that were objectionable to the working classes.

2. Protection from the competitors who for one reason or another were able to work cheaply.

3. Wholesome conditions of labor, such as shorter work-days and sanitary surroundings.

4. Security for the payment of what is justly due.

5. The right of organized efforts to safeguard and promote the interests of the working classes.

It is evident as one studies the sources of the movements to exclude negroes and Chinese from California that the motives back of this legislation were not purely economic. We repeatedly meet with dignified discussions of the social evils due to the presence of elements in the population incapable of assimilation. Complex race antagonisms and resentment at the thought of enforced association with what were looked upon as inferior races gave increased determination and bitterness of feeling to the efforts to exclude these competitors.

Undoubtedly the opposition to the Chinese was greatly strengthened by the fear of economic competition, and this fear was increased to a panic when the large numbers of incoming Chinese forcefully reminded the Californians of the vast accumulations of population from which this stream of immigration flowed. The legislation excluding the Chinese is the product of many years of determined effort on the part of the working men of California backed by the full force of the American labor movement. Those who have had an opportunity to gauge the beliefs and feelings of the masses can not doubt the continuation of this policy, as no political party could long survive the announcement of a determination to remove the restrictions on the immigration of Oriental labor.

Another type of legislation which has sought to prevent cheap competitors is that regulating convict labor. California is fortunate in that a satisfactory solution has at last been found for this difficult problem of the employment of convicts. Here again we have an impressive demonstration of the obstacles to be overcome in obtaining and enforcing labor legislation. It required ten years of agitation to obtain these laws and another ten years of effort to enforce them.

A third object of the California labor legislation is the promotion of good conditions of work. The shorter work-day has been the chief measure undertaken for this purpose. Notwithstanding the large amount of time and attention given to the eight-hour movements, more has been accomplished by collective bargaining than by legislation. This is largely due to the reluctance of the California courts to permit restrictions on the freedom of contract. The validity of laws regulating the hours of labor in public work has been reluctantly acknowledged. Even the laws protecting minors have received scanty support. Little or no effort was made to enforce the earlier child-labor laws, and ample precedents for the recognition of this type of legislation had been established in other parts of the country before the later California law met the test of a Supreme Court decision.

One is struck by the relatively small amount of attention that has been given to obtaining proper sanitation and protection from accidents. The few laws with these aims that have been passed have been enforced with the utmost carelessness, or entirely ignored. This is in striking contrast to the elaborate legislative and administrative provisions found in foreign countries, or even in a few of the older states of this country. Factory legislation of this kind is not usually promoted by workingmen alone. They are proverbially lacking in foresight in matters pertaining to the protection of their health. The coöperation of public spirited persons of wider outlook is generally necessary for the perfecting of such legislation, and this has been singularly lacking in California.

The fourth object of the labor legislation has been promoted by the laws permitting liens on property upon which services have been expended, and the provisions seeking to give wages the preference over other claims for payment of money due. The problem of finding ways of completing this protection by laws requiring a prompt money payment for services rendered has not been solved. The constitutional requirement of equality before the law prohibits any curtailment of the scope of the labor contract. It would seem that the difficulty can only be met by legislation requiring that the intention to make deferred or truck payments shall be clearly stipulated at the time when the employment begins. Even this would give inadequate protection, as the necessities of the working man often force him to accept unsatisfactory labor contracts.

It is only in recent years that the California trade-unionists have felt the need of laws for the protection of their right of organized efforts to promote their interests. The people of California have always been disposed to concede this right. The recent extensive use of the injunction in restraint of trade-union activities has been rendered possible by the precedents set in other state courts and in the federal courts. Public opinion is so little in sympathy with the more radical rulings of the courts that employers whose business depends on public patronage are not disposed to avail themselves fully of the advantages which the courts have given them.

In reviewing the California labor legislation, one is impressed with the absence of that paternalism which is so evident in European labor laws. The California wage-worker has sought the reform of abuses or a guarantee of just treatment rather than special privileges. With the self-reliance characteristic of the West, he has undertaken his own defense by an intelligent use of the ballot and by vigorous organized efforts. If unrestrained in his activities, it seems quite probable that he would be able to hold his own in any future controversies.

The man who works for his daily bread has no other weapons but those that he can fashion from human sympathies. Yet history has repeatedly demonstrated the impossibility of disarmament of a force so equipped. If for the good of society it is found necessary to restrain and regulate the activities of trade-unions, then some compensating protection must be found. Paternalism is out of harmony with our institutions and with the spirit of the American people. In proportion as governmental agencies undertake the regulation of the relationships hitherto subjected to trade-union control, the wage-workers will seek more effective representation in legislative bodies. The past history of California clearly demonstrates the readiness with which their power of united action may be turned into political channels.

The discreditable history of former experiences of this kind does not necessarily imply a lack of capacity for honest and efficient participation in governmental activities. Unfortunately the political history of California contains many other chapters quite as revolting as the one dealing with the recent records of San Francisco. On the whole, the labor movement of California has been singularly free from corruption. In proportion as the rank and file of its membership learn to take a more intelligent interest in political activities, we can hope for an infusion of the sturdy honesty that is generally characteristic of the American working man. There can be no question about the capacity of the wage-workers of California for persistent, self-sacrificing efforts. It remains for the public educational institutions, which have always received their enthusiastic support, to develop the means of thorough political and social training which shall utilize these splendid powers of united action for the promotion of the social welfare, if not for the political regeneration, of this most richly endowed of our American commonwealths.

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